

Leges

**INFORMATION TO OBTAIN THREE
PRODUCTION ORDERS**
(Section 487.012 of the Criminal Code)

Canada,
Province of Ontario

**DÉNONCIATION EN VUE D'OBTENIR
TROIS ORDONNANCES DE
COMMUNICATION**
(article 487.012 du Code criminel)
Canada,
Province De L'Ontario

This is the information of Allan Mathews, hereinafter called the **Informant**, of the City of Ottawa, in the Province of Ontario, a public officer appointed or designated to administer or enforce a federal law and whose duties include the enforcement of the *Canada Elections Act*, taken before me.

Les présentes constituent la dénonciation de (le dénonciateur), de (ville), dans ladite province de/du (province), _____, ci-après appelé le dénonciateur, portée devant moi.

The Informant says that he has reasonable grounds to believe and does believe that the following offences have been committed, namely:

Le dénonciateur déclare qu'il a des motifs raisonnables de croire que les infractions suivantes ont été commises, à savoir:

OFFENCE

INFRACTION

That a person or persons unknown, on May 2, 2011, at or near the City of Guelph and elsewhere in the Province of Ontario, did wilfully prevent or endeavour to prevent an elector from voting in an election contrary to paragraph 281 (g) of the *Canada Elections Act*;

And by so doing committed an offence contrary to paragraph 491 (3) (d) of the *Canada Elections Act*, S.C. 2000, c.9 as amended;

AND

That a person or persons unknown, on May 2, 2011, at or near the City of Guelph and elsewhere in the Province of Ontario, did, by pretence or contrivance, induce or attempt to induce persons to vote or refrain from voting or to vote or refrain from voting for a particular candidate and by so doing committed an offence contrary to paragraph 482 (b) of the *Canada Elections Act*, S.C. 2000, c.9 as amended.

And that the following documents or data will afford evidence respecting the commission of the offence described above:

Et que les documents ou données décrits ci-dessous fourniront une preuve touchant la perpétration des infractions énumérées ci-haut :

**DOCUMENTS OR DATA TO BE
PRODUCED**

**DOCUMENTS OU DONNÉES À
COMMUNIQUER**

#1 ROGERS COMMUNICATIONS

Copies, certified by affidavit to be true copies of documentation recorded or stored by means of any device; and/or

Documents prepared based on documents or data in existence, as the case might be

Located at or maintained by Rogers Communications, 350 Bloor Street East, Toronto, Ontario M4W 0A1, however stored (electronically, on microfiche, on paper, on photographic film or any other form), relating to:

- Internet Protocol (IP) address information relating to IP address 99.236.30.29 for the period March 26 to May 5, 2011 inclusive, including the name and address for any individual or entity associated to that IP address, copies of any account application, contract, agreement, customer acknowledgement, customer contact notes, billing records, and any other business or operating record relating to use of that IP address by any individual or entity for the relevant times;

- Internet Protocol (IP) address information relating to IP address 174.113.176.66 for June 16, 2011, including the name and address for any individual or entity associated to that IP address, copies of any account application, contract, agreement, customer acknowledgement, customer contact notes, billing records, and any other business or operating record relating to use of that IP address by any individual or entity for the relevant times;
- All Internet Protocol (IP) addresses assigned by Rogers Communications to, and all Internet Protocol numbers used by, Internet Services client "965 YORK RD THE MARTY BURKE CAMPAIGN", Rogers account number 6-3219-0260, for the period March 26, 2011 to May 2, 2011 inclusive;

And it further appears that there are reasonable grounds to believe that Rogers Communications has possession or control of the DOCUMENTS OR DATA TO BE PRODUCED.

#2 MTS ALLSTREAM

Copies, certified by affidavit to be true copies of documentation recorded or stored by means of any device; and/or

Documents prepared based on documents or data in existence, as the case might be

Located at or maintained by MTS Allstream, 200 Wellington Street West, Suite 1400, Toronto, Ontario M5V 3G2, however stored (electronically, on microfiche, on paper, on photographic film or any other form), relating to:

- Internet Protocol (IP) address information relating to IP address 66.46.250.130 for the period March 26 to May 5, 2011 inclusive, including the name and address for any individual, individual work station or entity associated to that IP address, copies of any account application, contract, agreement, customer acknowledgement, customer contact notes, billing records, and any other business or operating record relating to use of that IP address by any individual or entity for the relevant times;

And it further appears that there are reasonable grounds to believe that MTS Allstream has possession or control of the DOCUMENTS OR DATA TO BE PRODUCED.

#3 GOOGLE INC., OPERATING AS GOOGLE CANADA

Copies, certified by affidavit to be true copies of documentation recorded or stored by means of any device; and/or

Documents prepared based on documents or data in existence, as the case might be

Located at or maintained by Google Inc., operating as Google Canada 10 Dundas Street East, Suite 600, Toronto, Ontario M5B 2G9, however stored (electronically, on microfiche, on paper, on photographic film or any other form), relating to:

- Gmail address pierres1630@gmail.com for the period March 26, 2011 to the present, which identify the name, address, telephone number, alternate email address and any other identifying information for the individual registering the pierres1630@gmail.com email address; and
- The Internet Protocol (IP) address through which the registration of the email address pierres1630@gmail.com was sent, and any subsequent contact with the subscriber of the pierres1630@gmail.com email address, and any other business or operating record relating to use of that IP address by any individual or entity for the period March 26, 2011 to the present;

And it further appears that there are reasonable grounds to believe that Google Inc. operating as Google Canada has possession or control of the DOCUMENTS OR DATA TO BE PRODUCED.

The Informant says that he has reasonable grounds to believe and does believe the matters described above, and that his grounds are set out below, following the "OVERVIEW".

OVERVIEW

1. I, Allan Mathews, the Informant herein, am an Investigator in the Office of the Commissioner of Canada Elections (the "Commissioner") and a person charged by the Commissioner with duties relating to the administration and enforcement of the *Canada Elections Act* (the *Act*). For the purposes of section 487.012 of the Criminal Code, I am a public officer. I have personal knowledge of the matters and facts contained herein except where stated to be on information or belief and where so stated I believe them to be true.
2. I have been investigating complaints that, in relation to the 41st federal general election, in the electoral district of Guelph, Ontario, misleading telephone calls were made to electors on Election Day, May 2, 2011, in a manner that constituted the offences described above.
3. This Information to Obtain Production Orders (ITO) is to request 3 Orders for the production of Rogers Communications (Rogers), MTS Allstream and Google records relating to computer location and subscriber and computer access records that I believe will provide evidence of the offences set out above, particularly respecting the identity of the individual or individuals responsible. My grounds for belief are set out herein. These are the 7th, 8th and 9th Orders sought in this investigation.
4. This ITO explains how, as a result of my investigation, I have grounds to believe:
 - a) that individual electors received telephone calls around 10:00 hours on the morning of May 2, 2011, the caller of which was usually described as a recorded female voice giving a bilingual message, who claimed to be calling on behalf of Elections Canada. The gist of the message was that due to a projected increase in poll turnout, the elector's voting location had been changed to Old Quebec Street Mall at 55 Wyndham Street North, Guelph. Almost all recipients of the calls who noted their call display function said the calling number given was 450-760-7746;
 - b) that there was no truth to the information conveyed in these calls. The caller was not representing Elections Canada and no voting location had been moved. The electors called could not vote at the location named in the call as they did not live within the geographic catchment area of the polling station to which they were being told to go;
 - c) that, as a result of information gained through 6 Production Orders to date, I can say that the calls were transmitted from a company known as RackNine Inc., a Voice Broadcasting Vendor (VBV) in Edmonton, Alberta. RackNine also did voice broadcasts for the Marty Burke Conservative campaign to electors in Guelph; further
 - d) that the individual originating the calls was accepted by RackNine as client #93 on April 30, 2011, and that he used a false name and address in communicating with RackNine; further
 - e) that the individual used PayPal to pay for the services rendered by RackNine; further
 - f) that PayPal payment records show that an individual using the same false name and address as that given to RackNine Inc. logged on to the PayPal website to facilitate and pay for the service to be performed by RackNine, using Internet Protocol (IP) address 64.64.11.139. An Internet Protocol Address (IP address) is a numerical address assigned to each computer device that uses the Internet Protocol for communication on the Internet. The IP address can provide the location address of a computer using the Internet, through access to records of an Internet Service Provider; further
 - g) that IP address 64.64.11.139 has been traced to www.freeproxyserver.ca located at Conquest, Saskatchewan. A proxy server is a website that acts as an intermediary between the originator

of a message and its intended destination and shields the originating IP address from detection; further

- h) that notwithstanding the communication exclusively by proxy server with PayPal, the originator of the misleading messages was associated to 2 different IP addresses in RackNine records. The first is IP address 64.64.11.139, which links to the proxy server. The second is IP address 99.225.28.34, which is also identified in RackNine records as being used for connecting to RackNine voice broadcast orders from RackNine client #45, Andrew Prescott, Deputy Campaign Manager for the Conservative campaign in Guelph. IP address 99.225.28.34 can be traced to Rogers; further
 - i) that Rogers has reported that during the election period IP address 99.225.28.34 was subscribed to by a resident of a community southwest of Guelph. Persons resident there during the election period disclaim any involvement in the election process and deny knowledge of any of the primary Conservative campaign participants. At the same time, Conservative Party records indicate that IP address 99.225.28.34 was also used by 5 Burke campaign volunteers to communicate with the Party to access a Party database. The status of IP address 99.225.28.34 is still under investigation; further
 - j) that on April 30, 2011 Andrew Prescott shared RackNine contact information with Kenneth Morgan and Michael Sona; and further
 - k) that RackNine client #45, whom RackNine believe to be Andrew Prescott, used additional IP Addresses to log into RackNine on occasions before and after the misleading calls, and, as well, logged into RackNine as client #45 in a single web session along with client #93 using the same IP address.
5. I believe that by the pretence or contrivance of these misleading calls the conduct induced or attempted to induce electors to vote or not to vote, or to vote or not to vote for a particular candidate, contrary to paragraph 482 (b) of the *Act*. Similarly the conduct wilfully sought to prevent or endeavoured to prevent electors from voting in the election being carried out on May 2, 2011, contrary to paragraph 491 (3)(d) of the *Act*.
 6. On June 8, 2011, in furtherance of this investigation, I swore an ITO for Bell Canada records in relation to the 450-760-7746 telephone number, before Justice William Stewart, at Ottawa, Ontario. Justice Stewart issued a Production Order for Bell Canada the same date. The Production Order was served on Bell Canada June 8, 2011, and returns on the Order were made by Bell Canada on June 29, 2011 and on July 21, 2011.
 7. On September 7, 2011, in furtherance of this investigation, I swore an ITO before Justice Paulina Brecher, at Ottawa, Ontario for Distributel Communications Limited (Distributel) records in relation to 2 telephone numbers, 866-467-2259 and 877-841-3511, which were called by the 450-760-7746 telephone number on April 30 and May 1, 2011. Justice Brecher issued a Production Order for Distributel the same date. The Production Order was served on Distributel September 7, 2011. Returns on the Order were made by Distributel on September 14 and on September 27, 2011.
 8. Where I refer to Distributel in this present ITO I am referring to Distributel as the parent company to ThinkTel Communications (ThinkTel). ThinkTel is the telephone service provider for telephone numbers 866-467-2259 and 877-841-3511. Distributel produced documents or data of ThinkTel records in Distributel's capacity as the parent company and controller of the records.
 9. On November 22, 2011 in furtherance of this investigation, I swore an ITO before Justice Joyce Lester at Edmonton, Alberta for RackNine Inc. (RackNine) records in relation to calls made to telephone numbers 866-467-2259 and 877-841-3511 and action taken relating to telephone number 450-760-7746. Provincial Court Judge Mitchell Allen of Edmonton, Alberta issued a Production Order for RackNine, dated November 23, 2011. The Production Order was served on RackNine on November 23, 2011. Initial returns on the Order were made by RackNine on November 23 and 24, 2011.

10. On December 12, 2011 in furtherance of this investigation, I swore an ITO before Justice Claire Winchester at Ottawa, Ontario for eBay International AG and PayPal Canada Ltd (PayPal) records in relation to contacts with and payments to PayPal in respect of services rendered to RackNine by an individual identifying himself as Pierre Jones in relation to the calls made to electors at Guelph on May 2, 2011. Justice Winchester issued a Production Order for PayPal the same date. The Production Order was served on PayPal December 12, 2011. Returns on the Order were made by PayPal on February 15, 2012.
11. On March 20, 2012 in furtherance of this investigation, I swore an ITO before Justice Linda Pearson at Ottawa, Ontario for Rogers records in relation to IP address 99.225.28.34 subscriber and address information as well as information relating to contact with IP addresses between March 26 and May 5, 2011, and particularly with IP address 64.64.11.139. Justice Herb Kreling issued a Production Order for Rogers Communications the same date. The Production Order was served on Rogers March 20, 2012. A return on the Order was made on March 21 and 30, 2012.
12. On April 10, 2012 in furtherance of this investigation, I swore an ITO before Commissioner of Oaths Bonnie Murk at Saskatoon, Saskatchewan, for www.freeproxyserver.ca records in relation to IP address 64.64.11.139 contact with IP addresses between April 30 and May 2, 2011, and particularly with RackNine and with Pay Pal. Provincial Court Judge P.S. Kolenick issued a Production Order for www.freeproxyserver.ca the same date. The Production Order was served on Marc Norris, operating as www.freeproxyserver.ca on April 16, 2012. A nil return on the Order was made by Norris on April 16, 2012. He reported that the records kept were destroyed after a 24 hour retention period by his web hosting service, located in Virginia, USA.

PURPOSE OF PRESENT INFORMATION TO OBTAIN

13. I am swearing this present Information in support of a request for 3 Production Orders to obtain DOCUMENTS OR DATA TO BE PRODUCED pertaining to IP address records I believe to be in the possession or control of Rogers, Toronto, Ontario, MTS Allstream of Winnipeg, Manitoba, which has a corporate office in Toronto, Ontario, and Google Inc., carrying on business in Canada as Google Canada and which has offices in Montreal, Quebec and in Toronto and Kitchener, Ontario. The IP addresses were used to communicate with RackNine, with PayPal and with Google during and after the general election, and, with Google records, were directly used to assist in the arrangements necessary to broadcast misleading calls to electors on Election Day, May 2, 2011. None of Rogers, MTS Allstream or Google Inc. is a person who has committed or is suspected of having committed the offences set out under the heading OFFENCES above, or any other offences against any act of parliament. None of these entities is subject of this investigation and each is reasonably believed to have possession or control of the material named in the DOCUMENTS OR DATA TO BE PRODUCED that is pertinent to them.
14. This present Information explains my grounds for belief, which have been obtained from continuing investigation into this matter.

GROUND FOR BELIEF

Grounds for Belief to June 8, 2011

15. My investigation has proceeded in stages. I repeat at paragraphs 16 to 86 below the evidence I obtained from individual elector witnesses in Guelph and from Elections Canada officials in Guelph and Ottawa, as was set out in my ITO of June 8, 2011. I have edited some words and sentences to correct spelling, terminology and clarity. These paragraphs describe my initial grounds to believe that the offences described above in this present Information to Obtain occurred. Subsequent paragraphs summarize investigation details that led from Production Order #1 through to Production Order #6, concluding with my Grounds for Belief in respect of this present application.

The Witnesses – Individual Electors

16. This group comprise witnesses most of whom complained to Elections Canada of receiving a telephone call falsely claiming to be from Elections Canada, informing them that their polling

station had been moved. I have interviewed each of these individuals by phone, email or in person as described below.

Susan Campbell

17. On May 5, 2011 I contacted elector Susan Campbell by telephone and on May 19, 2011 I interviewed her at Guelph. She told me that the call was recorded on her voicemail at 10:15 on May 2, 2011. Campbell confirmed to me that the Strommer recording (see below) sounds just like the call she received.
18. Campbell recorded the number calling as 450-760-7746 from her call display. Campbell described the recording as a female voice in English telling her that her polling station was changed, due to high voter turnout. The call gave an Elections Canada number, 1-800-434-4456, to call back for questions. She attempted to call the number but found it was not in service. Campbell voted at the polling location assigned to her on her Voter Information Card (VIC) from Elections Canada. Campbell was incensed that someone would deliberately attempt to confuse voters and undermine democracy in this fashion. Campbell described the call as a direct attempt to influence her vote by confusing her.
19. The message had said her poll was switched to the Old Quebec Street Mall. She described this as a very inconvenient location as it was downtown, with very limited parking, and the streets around it were under reconstruction, causing traffic problems.
20. Campbell reported that she had not disclosed voting intention to pollster phoning earlier in the election campaign, but noted that her husband, John, was the Green Party candidate and they had a Green Party lawn sign, so their voting intention could be easily determined.
21. Campbell's assigned polling site was at the Saint Rene Goupil School, 221 Scotsdale Drive, Guelph. This is approximately 1.4 Kilometres from his residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 2.6 Kilometres from her residence.

Ella & Richard Kilpatrick

22. On May 5, 2011 I contacted elector Ella and Richard Kilpatrick by telephone. On May 19, 2011 I interviewed Richard Kilpatrick at Guelph. Richard Kilpatrick told me that the call was recorded on their voicemail at 10:07 on May 2, 2011. Richard described the call as an automated, bilingual call, with a female voice. The call sounded professional but with poor recording quality. The message said it was from Elections Canada. The gist of the message was that due to high voter turnout, her polling station had been moved to Old Quebec Street Mall. The recording provided a telephone number to call in the event of questions.
23. Richard confirmed to me that the Strommer recording (see below) sounded like the call he received. Richard also confirmed that the originating number for the phone call was recorded on his call display as 450-760-7746 and that the 1-800 number given for Elections Canada was 1-800-434-4456.
24. Richard found the call believable. He contacted his adult son, who lives with them, and told him the polling station had been switched to Old Quebec Street Mall, as his son was going to vote on the way home from work. A neighbour "Dave" subsequently told Kilpatrick the call was misleading. Richard Kilpatrick said his ability to vote would have been impeded by the call, had their neighbour not taken the time to tell them the call was false.
25. Richard Kilpatrick said that earlier in the election campaign he had received a call from a live caller, calling on behalf of the Liberal campaign. The call was made to the same residential phone number which received the misleading call of May 2. The caller asked if he would consider voting for the local Liberal candidate. He said no.
26. The Kilpatrick's assigned polling site was at the Elliott Home senior's complex at 170 Metcalfe Street, Guelph (The Ellington, actually at 168 Metcalfe). Elliott Home is approximately 600

meters from the Kilpatrick residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 1.6 Kilometres from their residence.

Shannon Testart & Kevin Carr

27. On May 5, 2011 I also contacted elector Shannon Testart by telephone and on May 19, 2011 I interviewed Shannon Testart and her spouse, Kevin Carr, at Guelph. Testart reported that she received a misleading call on her residential phone, moving her polling location. The call was received around 10:00 on the morning of Election Day, as voicemail. Testart did not hear the message until the end of the afternoon, after work. The call was an automated call, with a female voice. The message said it was from Elections Canada. The gist of the message was that due to high voter turnout, her polling station had been moved to Old Quebec Street Mall. The recording provided a telephone number to call in the event of questions. Testart obtained the number of the call from her call display. She and Kevin Carr subsequently emailed that number 450-760-7746 and the 1-800-434-4456 to themselves for the purpose of creating a record.
28. Testart and Carr went together to the Old Quebec Street Mall in order to vote. On arriving there the Elections Canada official greeting electors noted their VIC information and told them that the phone call telling them to come to the Mall was false. The official told Testart and Carr that they had to go to the polling location named on their VIC to vote. Both went to their assigned polling location and voted. Kevin Carr said that had they been relying on public transit to get to their polling location from the Old Quebec Street Mall they may not have made it in time to vote.
29. Testart said that earlier in the election campaign she had received a call from a live caller, calling on behalf of the Conservative campaign. The call was made to the same residential phone number which received the misleading call of May 2. The caller asked if she would consider voting for Marty Burke, the local Conservative candidate. She said no. Kevin Carr received 2 calls asking for his voting intention. Both were made to their residential number. The Conservative caller asked if he would consider voting for Marty Burke, the local Conservative candidate. Carr said no. The Liberal caller asked if he would consider voting for the local Liberal candidate. Carr said no.
30. On May 8, 2011 Testart forwarded the phone message, which was still on her voice mail, to me. The call that I received is incomplete, that is, the sound quality, especially of the French, was poor but it states:

This is an automated message from Elections Canada. Due to a projected increase in poll turnout your voting location has been changed. Your new voting location is at the Old Quebec Street mall at 55 Wyndham Street North. Once again, your new poll location is at the Old Quebec Street Mall at 55 Wyndham Street North. If you have any questions please call our hotline at 1-800-434-4456. We apologize for any inconvenience that this may cause.

The call repeated this message in French. Testart confirmed to me that the Strommer recording (see below) sounds just like the call she received and forwarded to me.

31. Testart and Carr's assigned polling site was at St. James Catholic School. This is approximately 950 meters from their residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 12 Kilometres from their residence.

Jason Newberry – Andrew Taylor

32. On May 6, 2011 I contacted elector Jason Newberry by telephone and on May 19, 2011 I interviewed Jason Newberry at Guelph. Newberry reported that he received the call early on May 2, 2011. The message said it was from Elections Canada and that due to high voter turnout his polling station was being moved to Old Quebec Street Mall. The call was from 450-760-7746, which he knew from call display.
33. Newberry no longer has a record of this number, but 450-760-7746 was the number Elections Canada inquiry staff member Christine Cantin recorded as provided by Newberry when he originally phoned Elections Canada to complain of the call, at 12:30 hours on May 2, 2011.

34. Newberry learned the call was a hoax from his business partner, Andrew Taylor. Newberry called back the 1-800 number provided but there was an out of service or similar message. Newberry and his wife had already voted at the advance polls, so the call did not directly affect his ability to vote. He did say that the call struck him as very strange and that it did not seem reasonable that Elections Canada would move a poll location like that at the last minute.
35. During the election campaign Newberry had indicated on his Facebook page that he would not be voting Conservative. He also recalled receiving a call from a live caller, who said she represented the Conservative Party, who asked him if they would get his vote. He responded something to the effect "not in a million years". The caller then ended the call. He received 'robocalls' from the Liberal Party candidate, but none of these asked if they could count on his support. The Conservative call about his voting intention, the Liberal 'robocall' and the misleading call moving his polling location were all received on his home phone.
36. Newberry confirmed to me that the Strommer recording (see below) sounds just like the call he received.
37. Newberry's assigned polling site was at the Priory Park Baptist Church, 8 Torch Lane, Guelph. This is approximately 900 meters from his residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 5.9 Kilometres from his residence.
38. On May 6, 2011 I contacted elector Andrew Taylor by telephone and on May 18, 2011 I interviewed Andrew Taylor at Guelph. Taylor reported that the call was received around 10:00 on the morning of Election Day. The call was an automated call, with possibly a female voice. The message said it was from Elections Canada. The gist of the message was that due to high voter turnout, his polling station had been moved to Old Quebec Street Mall. The recording provided a telephone number to call in the event of questions. He did not call the 1-800 number. He recorded the number as 1-800-434-4456 in a notebook. He also recorded the number that called his residence as 450-760-7746, based on his home phone's call display function.
39. Taylor confirmed to me that the Strommer recording (see below) sounds like the call he received
40. Taylor thought the call was unusual, and that Elections Canada would not switch polling locations in that fashion. He called Elections Canada and confirmed no poll locations had been changed in this manner. Taylor said that early in the election a live female caller, calling on behalf of either the Conservative Party or the Conservative candidate in Guelph, called the Taylor house and asked him if he would consider voting for the Conservative candidate. He responded no. Both the Conservative polling call early in the election and the misleading call moving his polling location were made to his residence phone.
41. Taylor's assigned polling site was at the Kortright Public School, 23 Ptarmigan Drive, Guelph. This is approximately 900 meters from his residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 8.2 Kilometres from his residence.

Eleanor & Don Ewing

42. On May 6, 2011 I contacted elector Eleanor Ewing by telephone and on May 18, 2011 I interviewed Eleanor and Don Ewing at Guelph. Ewing, who is a senior, reported that the call was received at 10:15 or 10:30 on the morning of Election Day. The call was an automated call, with possibly a male voice. The message said it was from Elections Canada, and that due to a high voter turnout Elections Canada was moving her polling station to Old Quebec Street Mall. Ewing called her son in Toronto. Her son, whom Ewing called, determined the call was not from Elections Canada and that her poll location had not changed. Both Mr. and Mrs Ewing had voted earlier in the election campaign so their ability to vote was not affected by the call.
43. The Ewing's assigned polling site was at Harcourt Church 87 Dean Avenue, Guelph. This is approximately 1.2 Kilometres from their residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 2.7 Kilometres from his residence.

44. Eleanor Ewing had not indicated any party preference during the election. Ewing was concerned that the call victimized other seniors.

Judith Strommer

45. On May 13, 2011 I received an email complaint from Judith Strommer. I interviewed Judith Strommer at Guelph on May 20, 2011. In her email Strommer also forwarded to me the message left on her phone on May 2 that directed her to the wrong polling station. Strommer explained that their Rogers phone plan included a facility for voicemails received by phone to be transferred to her computer, which saves the voicemail as an audio file and generates an email message advising Strommer of the voicemail receipt. Consequently she was able to forward me a file and the email recording the voicemail.
46. Strommer's attachment indicated the voicemail was received at 10:13 hours on May 2, 2011 and was a 63 second voicemail from number 450-760-7746. The message was identical to that forwarded to me by Shannon Testart. The English portion of the message was as follows:

This is an automated message from Elections Canada. Due to a projected increase in poll turnout your voting location has been changed. Your new voting location is at the Old Quebec Street mall at 55 Wyndham Street North. Once again, your new poll location is at the Old Quebec Street Mall at 55 Wyndham Street North. If you have any questions please call our hotline at 1-800-434-4456. We apologize for any inconvenience that this may cause.

The call repeated this message in French.

47. The English message is comprehensible, with scratchiness to it. Although the French message was generally comprehensible it was of a poorer sound quality than the English.
48. Strommer said a pollster for the Conservative candidate Marty Burke called earlier in the election, asking her voting intention. She told the pollster that it was not Marty Burke. Both the polling question and the misleading call of May 2 were made to her residence phone.
49. Strommer had voted in the Advanced Polls, so the misleading call did not affect her ability to vote. The Strommers' assigned polling site was at the Three Willows United Church 577 Willow Road, Guelph. This is approximately 300 meters from his residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 4.7 Kilometres from her residence.

Other Guelph Witnesses

50. On May 6, 2011 I contacted elector Tom Deligiannis by telephone. He reported receiving a recorded call, possibly a male voice, providing a bilingual message that the call was from Elections Canada. The call notified him that due to high voter turnout his poll had been switched to Old Quebec Street location. Deligiannis did not check for call display. Deligiannis is not a member of any party, but he had answered a number of phone polls in the campaign indicating he would vote Liberal.
51. On May 9, 2011 elector Len Zaifman responded to my questions by email. Zaifman reported that the call was received at 10:08 on the morning of Election Day from number 450-760-7746, as recorded on his answering machine. The call was an automated call, with what he thought was a synthesized voice. The message said it was from Elections Canada, moving his polling station to Old Quebec Street Mall. The call provided a number, 1-800-434-4456, to call if the elector had further questions. Zaifman had not indicated any party preference during the election.
52. Linda Payne, did not leave a phone number or address. Payne's original complaint to Elections Canada advised that she had received a morning call on May 2, 2011 that her polling station had been changed. She reported the call as from 1-450-760-7746. On June 6, 2011 I obtained Payne's address and phoned her. She recounted an automated call in the morning, reporting her polling station had been moved to Old Quebec Street Mall. She did not believe the call as she had heard a media report from May 1 that such calls might be made. Payne said she had not displayed any voting intention.

53. Payne's assigned polling site was at the Best Western Royal Brock Hotel, 716 Gordon Street, Guelph. This is approximately 3.8 kilometres from her residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 6.9 Kilometres from her residence.
54. The name of one elector who complained to Elections Canada on May 2, 2011 was not recorded. This individual said he had received a recorded call telling him or her not to go to his assigned polling station as it was too busy. The call was from 450-760-7746.
55. A complaint was received from Philip Zacariah of the Green Party EDA for Guelph, on May 2, 2011, reporting that the Green campaign office had received 7 complaints from supporters complaining of an automated phone call from Elections Canada saying that their polling station had been moved. His complainants noted the call was from 450-760-7746. I have twice contacted Zacariah and asked him for the contact information for his 7 complainants. He said he would get their permission to disclose that first and respond to me.
56. On May 16, 2011 Ben Jokela responded to my query of Philip Zacariah. Jokela reported having been phoned at 10:11 hours on May 2, 2011. A recorded voice claimed to be calling on behalf of Elections Canada. The recording said that due to a higher than expected voter turnout or volume his polling station had been changed to the Old Quebec Street Mall. In fact, Jokela had just returned to his residence after having voted at his assigned polling station at the Arkell Bible Chapel. The caller identification on Jokela's phone indicated the call was from number 450-760-7746. Jokela had indicated late in the election, to a call from a Conservative party caller, that he would not be voting Conservative.
57. Jokela's assigned polling site was at Arkell Bible Chapel, 39 Arkell Road, Guelph. This is approximately 2.4 kilometres from his residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 7.9 kilometres from his residence.
58. While in Guelph to interview witnesses I also learned of 2 additional call recipients, Fern Rooke and Joyce Keir, whom I subsequently spoke with by telephone. Rooke reported receiving the misleading call at either 9:55 or 10:05 on the morning of May 2, 2011. She described the call as per other witnesses above. She was upset by the call, but walked to her polling station to see what the problem was. She found she was able to vote and did so. Rooke reported being polled by 3 parties prior to Election Day and that she told both the Conservative and Liberal Party callers that they would not be getting her vote. These calls came to the same residential number as the misleading call of May 2, 2011.
59. The Rooke's assigned polling site was at the Harcourt Church 87 Dean Avenue, Guelph. This is approximately 1.4 Kilometres from their residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 3.5 Kilometres from her residence.
60. Joyce Keir had written a letter of complaint, dated May 5, 2011, which she gave to the Returning Officer, Anne Budra, who was a social acquaintance and which Budra had given to me (see below). Keir confirmed the letter as written by her. She reported receiving the misleading call at 10:09 on May 2, 2011. She described the call as per other witnesses above. Keir's voting intention could be determined by a Liberal campaign sign on her lawn.
61. The Keir's assigned polling site was at the Prior Park Baptist Church, 8 Torch Lane, Guelph. This is approximately 1 kilometre from their residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 3.9 kilometres from her residence.
62. On May 27, 2011 I spoke with Dave Hudson, a Librarian at the University of Guelph, by phone. Hudson had been interviewed by the CBC radio show *The Current*, broadcast May 11, 2011 during which a recording of the voicemail message from Hudson's phone, moving the polling station to the Old Quebec Street mall was played. Hudson advised me that he had called Elections Canada to report the call, but no such report has made its way to me. The call recorded on Hudson's voicemail and broadcast by the CBC is identical to the Strommer message (above).

63. Hudson reported receiving the call at 10:12 hours on May 2, 2011, as a voicemail. Hudson confirmed that the CBC recording of the voicemail was his. Hudson said he found the message and would have followed its instructions but for the fact that he had received warnings from reputable community sources, such as a campus wide email from the University of Guelph that the calls were false.
64. Hudson's polling site was at the Laurine Avenue Public School, 50 Laurine Avenue, a block from his house. This is 350 metres from his residence, when measured on Google Maps, whereas the Old Quebec Street Mall is 1.9 kilometres from his residence.

The Liberal Party List¹

65. A list of electors was provided to me at my request from the office of Frank Valeriote, the Liberal Party candidate elected on May 2. I asked for the list after reading media reports that the Liberal campaign in Guelph had received complaints from electors of the misleading calls. I have not called or interviewed the 79 electors who complained of the misleading call to the Liberal campaign office on May 2, 2011, except as follows: complainants Kilpatrick and Strommer on the Liberal list also complained to Elections Canada, and their account is as recorded above. In addition, on June 2, 2011, I phoned Maja Goodyear and Marj Husman from the Liberal list. I also emailed questions to Lane Aspinall the same date. Their accounts vary from those above and from each other. In summary:

Goodyear received several calls over a 4 day period telling her that her polling location had changed from the West End Recreation Centre to Westwood School. Her call display said "Conservative" but she cannot recall a number. The Goodyears (3 electors) went to Westwood School to vote, but were turned away and told to vote at the polling station noted on their VICs - the West End Recreation Centre. They did so and voted. The Goodyears had not displayed a voting intention.

Husman received what appears to have been the standard recorded call in the morning of Election Day, telling her of the move of her poll site to Old Quebec Street mall. Later, between 2:30 and 4:00 p.m. that afternoon, she got a second recorded call, claiming to be from Elections Canada, stating that her polling station was now closed. Her correct polling site was the West End Recreation Centre. The Husmans (2 electors) voted at their correct poll site as they did not believe the calls. The Husmans' voting intention was known by means of a Liberal lawn sign.

Aspinall received what appears to have been the standard recorded call in the morning of Election Day, telling him of the move of his poll site to Old Quebec Street mall. He voted at his assigned polling site as he did not believe that Elections Canada would move polling sites in that fashion. Earlier in the election campaign Aspinall had responded to a phone poll indicating an intention to vote Liberal. He cannot recall which party sponsored the phone poll.

The Witnesses – Elections Canada Staff

66. A single Returning Officer (RO) is appointed by the Chief Electoral Officer (CEO) for each electoral district. By subsection 24(2) of the *Canada Elections Act*, a RO is responsible for the preparation for and conduct of an election in their electoral district. Anne Budra was the RO for the electoral district of Guelph for the 41st general election.

Anne Budra

67. On May 5, 2011 I spoke with Anne Budra, the RO, and I interviewed her on May 19, 2011 at Guelph. Amongst her duties, Budra was responsible for locating polling sites to be located near electors who would vote at that site, as notified by Voter Identification Cards (VIC). She described a "poll" as a single grouping of electors, by geographic location, such as a street, with the poll staff consisting of a Deputy Returning Officer (DRO) and one or more poll clerks, with a single ballot box. A "polling station" or polling location would be a single geographic location having from 1

¹ Since this investigation began to receive extensive media attention, beginning February 23, 2012 I have received 2 additional lists from the Frank Valeriote Liberal campaign of electors who have complained to the campaign or to the constituency office about receiving "robocalls" about poll changes.

to 15 polls located in it, with 15 polls requiring an arena sized complex. Polling locations with 3 or more polls would also be staffed with a Central Poll Supervisor (CPS), a revision officer and an information officer, in addition to the DRO and one or more poll clerks at each poll (ballot box).

68. Anne Budra described Old Quebec Street Mall as one of her polling locations, primarily for electors living downtown within walking distance. She indicated it was a poor location for electors travelling by vehicle, as parking was very limited, access was delayed by extensive nearby construction and that polling space was limited there as it was a commercial mall. Old Quebec Street Mall had 4 polls on Election Day.
69. Anne Budra stated that the matter of the false calls to electors purporting to move electors' polling location to Old Quebec Street Mall was a significant problem with the election in Guelph on May 2, 2011. It threatened to overwhelm the RO's staff ability to respond to it. She advised that her receptionist, Adele McAlpine, who would normally monitor up to 4 incoming phone lines, was unable at times to deal with all the calls from electors about the misleading call, with overflow calls going unanswered. She noted that routine Elections Canada monitoring had advised her that 35% of incoming calls to the Guelph Returning Office went unanswered on May 2.
70. Budra also got feedback from CPS staff concerning the calls. She provided me with 3 reports from CPS referring to the problem of electors attending at their proper polling locations, who had received the misleading calls and who were uneasy about where they were supposed to vote. Some of these electors had gone to Old Quebec Street Mall and were now presenting themselves at their proper polling location. There was no reporting protocol in place for CPS to report back to the RO, but in the 3 instances above the CPS reported on their own initiative.
71. Budra also provided me with the Keir letter, referred to above, from individuals of her acquaintance lodging a complaint with Elections Canada, through her, concerning receiving a misleading call from 450-760-7746 moving their polling station to a "busy downtown mall".

Laurie Rotenberg

72. On May 5, 2011 I spoke with Laurie Rotenberg, the CPS at the Old Quebec Street Mall on Election Day. I also met with Laurie Rotenberg on May 19 at Guelph. Rotenberg had 4 polls at the Old Quebec Street Mall, with each poll responsible for up to 400 or 500 possible electors. In addition to the polls, each with a DRO and one or more poll clerks, he had a revision officer and an information officer on site.
73. Rotenberg reported that as soon as the polls opened at 9:30 a.m. electors began appearing telling his staff that they had received a phone call that their polling location had been moved to the Old Quebec Street site, and they consequently were presenting themselves to vote. They could not vote at the Old Quebec Street site, as each poll can only accept the votes of the individuals assigned to it, or who could prove they reside within that poll's geographic catchment. Consequently the voters appearing at the Old Quebec Street polling location as a result of the misleading phone calls could not vote there. As the problem surfaced quickly, Rotenberg and his information officer were able to organize a system whereby the information officer, who greeted most electors as they came in the polling station, checked their VICs. Poll staff could then tell the misdirected electors they could not vote at Old Quebec Street Mall and had to return to the polling location on their VIC.
74. Rotenberg estimated that over the day between 150 and 200 electors presented themselves at Old Quebec Street on the basis of the misleading phone call and were unable to vote there. Rotenberg noted that the Old Quebec Street site had approximately 1000 votes cast by electors who were properly there, so the misdirected population was over 15%.
75. He observed that many of the misdirected voters responded with anger that a dirty trick had been played. Many were upset. Some electors just stormed out of the polling location, several ripped up their VIC, indicating to Rotenberg an intention not to return to their proper polling location to vote, while others reacted with a determination to go to their proper polling station and vote. He noted a number of misdirected electors were present with walkers, others were dropped off by friends and some with children in strollers, so that the level of inconvenience to electors was significant.

Adele McAlpine

76. On May 5, 2011 I spoke with Adele McAlpine, receptionist at the RO's office in Guelph on May 2, 2011. I also met with Adele McAlpine on May 20, 2011. She advised that she worked as receptionist at the RO's office from approximately 08:50 hours on May 2, 2011 until past midnight. McAlpine said that as soon as she arrived for work she was inundated with calls from voters who had received the misleading call and who wanted to know more about the change of their poll location, which was the first McAlpine had heard of the matter. She told electors to vote at the address on their VIC, which each elector had received by mail.
77. McAlpine explained that the receptionist arrangement at the RO office involved 4 incoming phone lines. She often could not keep up with the volume of incoming calls concerning the move of electors to the Old Quebec Street Mall.
78. McAlpine said the calls were very disruptive to her own work as a receptionist (calls missed etc.) and she could sense from those calling her that the misleading phone calls were very disturbing to the electors calling her. She reported that the volume of calls from electors tapered off after noon, but picked up considerably again when people began coming home from work and picked up voice mails of the misleading calls.
79. McAlpine said that the electors who phoned the RO office and who had recorded the number of the call, all reported the same number as the source of the call. McAlpine tried the number herself and got the 'not in service' message. She does not now recall the number.

Judy Ward

80. On May 5, 2011 I spoke with Judy Ward, an employee of the Returning Office for Guelph, who had been a trainer of Deputy Returning Officers (DRO) and Poll Clerks in the lead up to the general election, and who was a supervisor and trouble shooter on Election Day for polling sites on the north side of Guelph. I also met with Judy Ward on May 18, 2011.
81. Ward worked from 08:45 hours on May 2 through to 01:30 hours on May 3, 2011. She advised that her duties took her to 13 or 14 polling stations in Guelph to assist DROs and Poll Clerks as necessary. Ward said her visits to the first 2 poll locations she went to were uneventful, but that when she reached the third she heard from DROs and Poll Clerks about electors who had attended at the polling location complaining of having received a call from Elections Canada advising them their polling location had been moved to the Old Quebec Street Mall. She continued to hear about this from DROs and Poll Clerks until the end of the vote at 9:30 p.m. She observed that many electors were anxious and concerned about the call and unsure if they were at the correct polling station until they were allowed to cast their ballot.

Gillian Buckle

82. On May 19, 2011 Anne Budra had also provided me with a handwritten report of May 3, 2011 from Gillian Buckle, a CPS responsible for 5 polls located at Mary Phelan Catholic School, 8 Bishop Court, Guelph. I subsequently contacted Buckle by telephone on May 24, 2011. Buckle reported that between 5 and 10 electors at Mary Phelan School reported having received the misleading call. In her written report she noted the phone number given to her by these electors as being the source of the call as 450-760-7746 and the number for further assistance given in the message as being 800-434-4456. Both numbers are consistent with the accounts of the witnesses above. Buckle's information is reported in this Information as an example of additional recipients of the misleading calls, as none of the examples above relate to electors voting at Mary Phelan School.

Keith Walker

83. On June 2, 2011 I spoke with Keith Walker, Chief of Systems Development and Testing, in Field Readiness, Election Management. Walker explained that Elections Canada maintains a National Register of Electors, which is updated several times each year. Each elector on the list is assigned to an electoral district and a polling division based on their addresses. Electoral

districts (or constituencies) are divided into polling divisions, which is a geographic area containing approximately 350 individual electors. There are approximately 200 polling divisions in each electoral district. As well, returning officers have an inventory of possible polling sites at which electors will vote. These sites are confirmed at the time of an electoral event. Within each polling site are one or more polling stations, or individual ballot boxes, corresponding to a polling division.

84. Voter Information Cards are mailed to individual electors between day 26 and day 24 before Election Day, identifying for each elector their polling site and polling station.
85. Walker confirmed that each polling station would have a list of electors containing the names of those electors assigned to that individual polling station. Only those electors assigned to that polling station, or who could prove they now reside within the geographic boundary of that polling station could vote at that station.

Sylvie Jacmain

86. Sylvie Jacmain, Director of Field Services, Elections Canada, has advised me by an email of May 9, 2011 that Elections Canada does not contact electors by telephone to change a polling location. If a change of polling station were necessary, for example by the sudden unavailability of a polling site (building), the change would be done by an RO reprinting and sending new Voter Information Cards to electors, or, for last minute changes, through media broadcasts, and personally by Elections Canada staff at the closed polling location.

The Phone Number

450-760-7746

87. On May 4, 2011 I conducted Internet checks on phone number 450-760-7746. Area code 450 covers that portion of the province of Quebec around Joliette, northeast of Montreal. The phone number is part of the Bell Canada (Bell) system. I contacted Denise Murley, a Security Associate at Bell Corporate Security, also on May 4 and again on May 9. On May 9, 2011 Murley advised me that phone number 450-760-7746 was assigned to a Virgin Mobile cell phone. Virgin Mobile is a subsidiary of Bell. Bell retains origination and termination records for phone number 450-760-7746, also known as Call Detail Records (CDRs). In the case of cell phones a CDR can also include the receipt of a text message, the location of the phone at the time of receiving or making a call, and whether a received call was answered or went to voice mail. These Bell records disclose each number phoned from 450-760-7746 and, in most cases, each number phoning 450-760-7746, as well as the length of the call.
88. Denise Murley also advised me the phone appeared to have been activated towards the end of April, 2011. Murley also indicated that the phone was a pay-as-you-go cell phone. In other words there is no phone plan attached to it, nor are costs billed to a customer, rather a customer buys time from a retail outlet and adds it to his phone. The time allows a customer to continue to use the phone for the period of time purchased. For this reason, she said, Bell does not have a subscriber address. She indicated the subscriber to the phone was named in Bell records as "Pierre Poutine".

Conclusion based on paragraphs 16-88 (June 8, 2011)

89. The information above, which was set out in my ITO of June 8, 2011, describes my initial grounds for belief that misleading calls were made to a number of electors in the city of Guelph which falsely claimed to be from Elections Canada and which falsely claimed the electors' "voting location" had been moved to the Old Quebec Street Mall. Further, I believe that those electors who went to the Old Quebec Street Mall polling location on the basis of the misleading call would not have been able to vote there, and that Elections Canada poll staff at the Old Quebec Street Mall reported that a significant number of electors did attend there as a result of receiving the misleading calls. Finally, I believe that most electors interviewed by me who had received the call believed it to come from phone number 450-760-7746, based on their telephone call displays, and that Bell would have records relating to the use of phone number 450-760-7746. I believe that these circumstances, to which the facts described below can be added, establish reasonable grounds for me to believe that the offences described above occurred.

Additional Grounds for Belief to September 7, 2011

90. As a result of the information above I sought and obtained a Production Order on Bell, dated June 8, 2011 for subscriber and call records relating to the phone number 450-760-7746. The return on the Production Order consisted of subscriber information and CDRs for phone number 450-760-7746.
91. The Bell CDR showed that phone number 450-760-7746 had been activated on April 30, 2011, and had only ever called 2 phone numbers (other than its own voicemail), these being phone numbers 866-467-2259 which was called 3 times on April 30, and 877-841-3511 which was called 7 times in the late evening of May 1, 2011. The Bell CDR showed 281 call records of calls made to 450-760-7746 on Election Day, May 2, 2011. Each of these 281 went to voicemail and were primarily from the 519 area code, which includes Guelph. I believe, based on witness accounts of calling back to the 450 number, that the bulk of the 281 calls were likely from electors calling the 450-760-7746 number back to find the origin of the misleading change of poll calls made on Election Day.
92. Additional information from Bell stated that the subscriber to phone number 450-760-7746 was recorded as Pierre Poutine of Separatist Street, Joliette, Quebec. I believe this name and address to be false.² The Bell CDR showed that phone number 450-760-7746 did not actually make the misleading calls to Guelph electors.
93. On August 23, 2011 and on several occasions since then I called the 2 phone numbers that were called by 450-760-7746 on April 30 and May 1, namely numbers 866-467-2259 and 877-841-3511. On each occasion that I called 866-467-2259 I got a recorded voice welcoming me to RackNine and offering a variety of services, including web hosting, a VoIP digital phone service (see immediately below) and a Do Not Call List (DNCL). I also called 877-841-3511 at the same times. This number was answered with a recorded greeting asking me to log in with my customer number. I subsequently conducted internet searches of RackNine and obtained a further description of the services available through RackNine to the effect that RackNine is in the business, amongst other things, of Voice over Internet Protocol (VoIP) calling.
94. On May 18, 2011 Simon Rowland emailed the Commissioner's Office offering assistance in this matter, having become aware of the issue of misleading calls from media reports. Rowland is a former New Democratic Party (NDP) Candidate in the general election of 2000, and is the Chief Executive Officer (CEO) of Direct Leap Innovations and Direct Leap Technologies, Inc. (Direct Leap). Direct Leap was involved in the 2011 general election by providing telephone services to the NDP, and also provides phone services to a number of non-profit organizations. Direct Leap and Rowland are also involved in technological developments in the area of call center systems, telemessaging and telecom product development and network engineering. Rowland is both a partisan participant in the political process and also a subject matter expert in respect of telephone call centers.
95. I spoke with and exchanged emails with Rowland a number of times and met him on August 23, 2011. I asked about the absence of calls to electors from phone number 450-760-7746 on May 2, 2011 as demonstrated in the Bell CDR. He advised that this was not unusual for call center operations. Rowland said that a person wishing to send out a phone message *en masse* would contract with a Voice Broadcasting Vendor (VBV) for this service. Rowland said that a VBV primarily uses either digital or VoIP (Voice over Internet Protocol) calling technology. VoIP calling is computer generated calling over the internet to recipients' telephones. These technologies allow the VBV to program into the call process any calling number their client wished to use as the calling number to be displayed on a recipient's call display, even though that number would have nothing to do with the actual call being made by the VBV.
96. Rowland noted that with telemarketing scams, the originating caller or entity may purchase a prepaid cell phone for use of the cell phone number in this way. The number that appears on a recipient's call display would not be the real number used to call the recipient or to numbers with a

²I have found no such name or address related to Joliette, Quebec. However, a restaurant called Pierre's Poutine exists at 71 MacDonnell Street, Guelph.

history of use or which can be traced back to an identified subscriber. According to Rowland there is no law that prevents this from happening, and it happens frequently in the VBV industry.

97. Rowland described a possible scenario in which the calls were sent out by the VBV at a high rate, which could account for the extensive reception of such calls around 10:00 a.m. on May 2, 2011 by multiple Guelph electors. The calls would come from a VBV, but appear to the recipient as coming from phone number 450-760-7746. In such a scenario the cell phone whose number was used as the 'calling number' did not make the calls, and consequently the Bell CDR for 450-760-7746 would show no outgoing call activity at all on May 2, 2011. He noted that it would be impossible to achieve a high rate of calls using the cell phone directly.
98. On August 25, 2011 I used a Google search for reverse toll free number lookup for each of the 2 toll free numbers given above. The Google search was at <http://www.customtollfree.com/toll-free-reverse-lookup>. This search provided a result that the telecommunications service provider for both toll free numbers 866-467-2259 and 877-841-3511 is Allstream Inc., a Canadian telecommunications communications provider located in Toronto. On August 25, 2011 I called Allstream and spoke with Anders Gurhalt. He confirmed that both 866-467-2259 and 877-841-3511 were Allstream numbers. He advised me that both numbers had been sold to a wholesaler - ThinkTel Communications - for onward sale to customers.
99. On August 25, 2011 I queried ThinkTel Communications Inc. of Edmonton. Their web page indicates they are a subsidiary of Distributel Communications. I called ThinkTel Communications, also on August 25, and asked if they could confirm that they were the service provider to numbers 866-467-2259 and 877-841-3511, and if they could confirm to me that RackNine was the subscriber to those numbers. I was asked to send my query by email, which I did on August 25. On August 29, 30 and September 6, 2011 I spoke with Jared Riddoch of Distributel. He advised Distributel is the parent of ThinkTel Communications. On September 6 Mr. Riddoch confirmed by email that numbers 866-467-2259 and 877-841-3511 were serviced by ThinkTel Communications, but that a Production Order would be required on Distributel, the parent company, before more information could be disclosed.

Additional Grounds for Belief to November 23, 2011

The Distributel Record

100. As a result of the information above I sought and obtained a Production Order dated September 7, for subscriber and in-coming call records relating to the phone numbers 866-467-2259 and 877-841-3511, which I believed were in use by RackNine, of Edmonton. The return on the Production Order from Distributel consisted of subscriber information and in-coming CDRs for RackNine phone numbers 866-467-2259 and 877-841-3511. Distributel confirmed that the numbers 866-467-2259 and 877-841-3511 were in use by RackNine.
101. The Distributel CDR returns provided for the RackNine numbers 866-467-2259 and 877-841-3511 identified 864 incoming calls.
102. The Bell CDR had shown that phone number 450-760-7746, which was the number identified by Guelph electors as the calling number for the misleading calls, made 3 calls, from Guelph, to RackNine number 866-467-2259 at specific times on April 30. As well, the Bell Canada CDR showed that phone number 450-760-7746 made 7 calls, from Guelph, to RackNine number 877-841-3511 at specific times on May 1, 2011.
103. The Distributel CDRs, however, showed the same 10 calls to the same numbers 866-467-2259 and 877-841-3511 as coming from 519-766-2000. The 519 area code includes the city of Guelph. I compared the 519-766-2000 calls of the Distributel CDR against the Bell CDR record. The RackNine call times are recorded as Mountain Daylight Time (MDT), as confirmed to me on September 21, 2011 by Amber Hancock of Distributel. The calls as recorded by Bell and by Distributel occur at the same time of day, taking into account the 2 hour difference between the Distributel record in MDT and the Bell record in Eastern Daylight Time (EDT). The calls are also for virtually the same length of time, in seconds, with each Bell call being slightly longer. I accept the differences of several seconds between the Bell and Distributel call

records, as they are timing 2 different phones at the moment of their respective pickup and disconnection.

104. On September 14 and 20, 2011 I learned from Denise Murley of Bell Corporate Security that she believed 519-766-2000 was a long distance routing number, and not a valid phone number in itself. Murley told me that Bell technicians advised her that 519-766-2000 is associated to a trunk route. She described a trunk route number as being the way in which calls are routed to their destination. This would allow the 'trunk' to carry many calls simultaneously to different recipient numbers. Thus 450-760-7746 could make the call to a toll free number, which the Bell CDR would recognize, but the recipient CDR may just recognize the trunk, or routing number as the calling number.

Conclusion Based on paragraphs 100-104

105. Based on the material described above I concluded that it is reasonable to believe that the 10 calls noted above as being made to the RackNine numbers 866-467-2259 or 877-841-3511, which the Distributel CDR identifies as coming from 519-766-2000, in fact came from and are related to the 450-760-7746 phone number. I made this conclusion based on the identical times of the 10 calls in the Distributel and Bell CDRs to the same numbers 866-467-2259 or 877-841-3511, once the effect of the time zone difference is taken into account; and based on the almost identical lengths of calls as set out above; and based on the explanation of Denise Murley of Bell Canada Security.

The Distributel Record, Continued

106. Area code 519 includes the city of Guelph. Area code 226 is an 'overlay' area code over 519, and includes Guelph as well. The Distributel CDR identified 37 other calls made from the 519 area code to 866-467-2259 or 877-841-3511 during the period March 26 through May 5, 2011, as well as 1 call from the 226 area code. By "other calls" I mean 37 calls in addition to the 3 calls of April 30 and 7 calls of May 1 referred to above at paragraphs 100-104.
107. Of the 37 "other calls", 30 calls were made by 3 phones, numbers 519-265-5392, 519-265-5396 and 519-265-5398. I conducted a reverse number database query on Google and determined the phones were served by Rogers. On September 19, 2011 James Ansell of Rogers Law Enforcement Support advised me by email that the subscriber for each of these phones was "The Marty Burke Campaign". The contact person was given as Andrew Prescott of Guelph and the campaign address given as 965 York Road, Guelph, Ontario. I know from Elections Canada records filed by candidates in the 41st general election, that Marty Burke was the Conservative Party candidate in the Guelph electoral district in the 41st general election. Internet research I conducted on June 2, 2011 identified an online news article from "The Record" of Kitchener Waterloo, which identified Andrew Prescott as the Deputy Campaign Manager for the Burke campaign.
108. An additional Guelph call to RackNine, as indicated on the Distributel CDR, came from 226-444-9005 on April 21, 2011. I called 226-444-9005 on September 19, 2011 and got a voice recording welcoming me to the Guelph Conservative Party. Elections Canada records identify the Guelph Conservative Electoral District Association (EDA) as the registered association of the Conservative Party of Canada in the riding of Guelph.
109. In summary, the 3 Burke campaign phone numbers, and the present Guelph Conservative Party phone number, called the 2 RackNine numbers 866-467-2259 and 877-841-3511 a total of 31 times between March 26 and May 5, 2011, with 29 of those calls going to the 877-841-3511 customer log in number.

The Marty Burke Candidate's Electoral Campaign Return

110. Section 451 of the *Canada Elections Act* requires that within 4 months following an election the Official Agent of a candidate shall provide the CEO with a Candidate's Electoral Campaign Return detailing the financing and expenses for the candidate's electoral campaign. A Return must include a "statement of election expenses", which is found at part 3a of the Return, and be accompanied by submission of supporting documents, such as invoices. The Candidate Returns

are posted on the Elections Canada website. The Returns and supporting documents are accessible to the public.

111. I examined the Return submitted by Abdul-Qayum Ali, the Official Agent for the Marty Burke campaign, as found on the Elections Canada public website. Part 3a of the Burke Return lists campaign expenses of \$87,361.60, but does not list RackNine as an expense. I also examined the supporting documents submitted in respect of the Return on November 7, 2011. No invoice or other record was submitted relating to RackNine.
112. Included in the Burke campaign's supporting documents were 2 Rogers's invoices, with invoice dates of April 9 and May 9, 2011 respectively, for cable, internet and phone services for the campaign. Each invoice included charges for the 3 campaign phones 519-265-5392, 519-265-5396 and 519-265-5398 noted above at paragraph 107. I examined these invoices on November 7, 2011. The invoices identified the client as "965 YORK RD THE MARTY BURKE CAMPAIGN", with account number 6-3219-0260.
112. a. The Rogers invoice dated May 9, 2011 included long distance charges for each of the 3 phones for outgoing calls that incurred calling charges, that is, for calls not going to toll free numbers. The invoice portion for Burke campaign phone 519-265-5392 identified 2 calls to Edmonton from Guelph on May 2, Election Day. The first call was to 780-643-2459. The second call was to 780-668-8400 at 19:11 hours. On November 14, 2011 I called 780-643-2459 and reached a recorded message welcoming me to RackNine. The recorded message was an identical welcome message to the one heard when I phoned the RackNine toll free number 866-467-2259 on August 23 and again on November 14, 2011.
113. On August 26 and again on October 21, 2011 I queried Facebook pages associated to RackNine and to Matt Meier, RackNine's CEO. On both occasions I located a Facebook page for Matt Meier which includes an entry identifying 780-668-8400 as his phone number. In other words the user of the Burke campaign phone number 519-265-5392 on May 2, 2011 called the number for the CEO of RackNine in the evening of Election Day. The information available to me from the first 2 Production Orders, from Bell and from Distributel, still did not make a positive link between the misleading calls of May 2, 2011 and a specific individual or entity.

Conclusion Based on paragraphs 106-113

114. I concluded from the above that RackNine likely acted as a VBV for the Marty Burke campaign for the general election in Guelph, based on the campaign phones calling RackNine numbers 866-467-2259 and 877-841-3511 during the election campaign period, as 29 of the 31 campaign calls made to RackNine went to the customer log in phone number 877-841-3511. I reached this conclusion notwithstanding the absence of any RackNine cost in the campaign's Electoral Campaign Return. Using a VBV during an election period is not prohibited under the *Canada Elections Act* and is frequently pursued by parties and candidates to make automated telephone calls to electors. I concluded, however, that failure to identify the RackNine expense was consistent with the nature of the impropriety suggested by the misleading calls.³
- 114.a. Further, I concluded that the Internet charge on the Rogers bill demonstrates that Rogers was the Internet Service Provider (ISP) for the Marty Burke campaign. As noted at paragraph 4 f) above, an ISP assigns an IP address through which computer devices communicate on the Internet. Therefore Rogers should have a record of IP addresses that properly belong to and were used by the Marty Burke Campaign account.

Brent Pedersen

115. Brent Pedersen is a Guelph resident who received a misleading call by voice mail at his home number claiming that his polling station had been moved. I interviewed Mr. Pedersen on October 24, 2011. Pedersen has 14 years technical experience in the call centre environment. He told me that he has extensive knowledge of telephony (telephones, telephone switches and telephone connections), and of call centers and automated dialing. Mr. Pedersen described how a VBV

³ I have since learned of an alternate explanation. See below under Andrew Prescott.

operation could work using VoIP (Voice over Internet Protocol) phoning. Mr. Pedersen explained that in his view, the VBV would retain data relating to the calls made by the VBV, at least for billing and dispute resolution purposes. The data would include the ANI or “Automatic Number Identifier” and the DNIS or “Dialed Number Identification Service”, giving the ability to generate CDRs. He also noted that it is possible for VBVs to change the ANI data so that the calls appear on their recipients’ call displays as coming from a different telephone number than the number actually used by the VBV. Mr. Pedersen’s account is consistent with that of Simon Rowland, above at paragraphs 94-97.

The RackNine Record

116. As a result of the information above I sought and obtained a Production Order in Edmonton, Alberta, dated November 23, 2011, for RackNine records relating to the Marty Burke campaign and to calls made to Guelph electors on May 2, 2011. I served the Order on Matt Meier, the President of RackNine, on November 23. Meier confirmed to me that phone numbers 866-467-2259 and 877-841-3511 were RackNine numbers. Meier immediately located certain records and provided a statement to me. He has also provided a number of additional records to me by email, since November 23.
117. Meier described his VoIP calling arrangement. He limits the phone calling to political campaign work only, and does not advertise. He has the capacity to make 200,000 calls an hour at 1.9 cents a call. He described the process as follows. A client would come to him as a known individual or be recommended to him by an existing client. If accepted as a client, Meier would assign a customer number to the client. After this clients could access and use RackNine’s automated system. A client would then log in by phone or internet and electronically provide a voice recording file of the message to be delivered, an electronic file of phone numbers to be called and to give automated scheduling instructions. RackNine’s automated process would call the message out when scheduled. Meier would not personally hear or listen to the messages to be transmitted. Meier said that payment for RackNine services was usually by PayPal.

The RackNine Record - phone number 450-760-7746

118. Meier located and provided me a digital copy of the voice message that was the subject of elector complaints to Elections Canada and which was transmitted to phone numbers in Guelph as though coming from 450-760-7746 on May 2, 2011. I listened to this message and confirmed it was the same as the Strommer message noted at paragraph 46 above.
119. Meier identified a second voice message that the same client had uploaded but later ‘deleted’ and which was never sent. Meier explained to me that although a client has the option to ‘delete’ material which the client had uploaded but about which the client later changed their mind, in fact what the delete function did was to “hide” the data in RackNine records. RackNine still retained a record of all transactions with clients, including ‘deleted’ material. I listened to the second message. It had the appearance of being in support of the Frank Valeriote (Liberal Party) campaign in Guelph. The voice sounded to me as though computer generated rather than a script read by a live person.
- 119.a. Meier, on May 9, 2012, confirmed to me that the instructions originally left for broadcasting the ‘deleted’ Valeriote message were that the same calling lists as with the misleading calls was to be used and the numbers were to be called between 02:00 and 04:45 hours, Guelph time, on May 2, 2011. The calling number to be displayed was that of the Frank Valeriote campaign office, 519-837-2651 (see paragraph 129 below).
120. The RackNine record identified the client who requested the transmission of the misleading message to electors as RackNine client #93. Meier located a brief email exchange he had with client #93, between April 30 and May 2, 2011, which Meier says is the only record he has of the individual’s identity. The client emails were from address pierres1630@gmail.com. Meier provided me with a copy of this email exchange. In context the email exchange was preceded by a conversation (see below at paragraph #121). In the email exchange Meier asked this new client for contact information, including name, address, phone number and affiliated organization. The individual responded by writing he was Pierre S. Jones, a University of Ottawa correspondence student residing in Joliette, Quebec, with a contact phone number of 450-760-7746. There is

nothing in the email record giving the individual's address, beyond Joliette, Quebec. He signed his emails as "Pierre". It thus appears that this client relationship with client id #93 or "Pierre" was created on April 30, 2011.

121. Meier has since advised me, by an email of December 1, 2011, by email on February 27, 2012 and in person on May 9, 2012, that all his clients know him or are recommended to him through political candidates, campaign managers, political party staff or party activists/organizers. During the 2011 general election he was under contract with the Conservative Party not to provide his calling service to other parties. Pierre initially called Meier on Meier's unlisted extension directly and asked for him by name. Pierre referred to knowing someone in the Conservative Party. In Meier's view these facts meant that someone must have given Pierre his contact information.
122. Meier identified and provided me with RackNine records which showed that client id #93 logged into RackNine via the internet 13 times on May 1 and May 2, 2011, 2 of which attempts were unsuccessful due to password mistakes. These are in addition to any phone contact to the customer log in number 877-841-3511. Meier was not able to provide an IP or Internet Protocol address for these log ins, when we met in November, 2011. See further information below in this regard, beginning at paragraph 159.
123. Client #93 uploaded a phone list, of 6737 phone numbers which was never used by the client, according to the RackNine record. Meier provided me with a copy of this list.
124. Client #93 also uploaded a phone list of 6738 phone numbers, which list he named "supporters", a copy of which Meier provided to me. This list was the list used to make the misleading calls of May 2, 2011. Both lists contained the same primarily 519 area code numbers.
125. The difference between the 2 lists is that the list that was used, of 6738 numbers, included the number 450-760-7746 to be called, and the list of 6737 numbers did not include this phone number. In other words the client included his own number in the call out. The calling list provided by RackNine indicates this call to 450-760-7746 went out at 08:03 a.m. MDT on May 2 and was recognized by RackNine as an "early hangup". I have since confirmed from the Bell CDR that phone number 450-760-7746 did receive a call, from what appeared to be phone number 450-760-7746 at 10:03 a.m. EDT. Phone number 450-760-7746 was, of course, the calling number put in place at RackNine on the instructions of client #93. Matt Meier confirmed on May 9, 2012 that phone number 450-760-7746 was included in the list of numbers, by "Pierre Jones" as a test call, so that the individual responsible would know the calls to electors were proceeding. Test calls are an option on the RackNine database.
126. RackNine records provided to me further showed that RackNine made 7676 calls (which include call backs if no answer) between 08:03 and 08:14 Mountain Daylight Time, May 2, 2011, with the calling number given as 450-760-7746. This time would be 10:03 and 10:14 Eastern Daylight time in Guelph. The cost to the client was \$162.10.
127. On December 1, 2011 I checked each of the phone numbers of the 18 individual witnesses named above at paragraphs 16-65 against the numbers on the RackNine calling list of 6738 (the broadcast list). Seventeen (17) of the electors' phone numbers were also on the RackNine list. The absent individual was Marj Goodyear, at paragraph 65, whose description of the misleading call differed from the other 17 individuals.
128. Meier located and gave me 3 PayPal payment records from client #93. The records are individual PayPal forms called "Transaction Details". PayPal identified the payment as coming from Pierre Jones, 54 Lajoie Nord, Joliette, Quebec, J6E 3B3, and giving an email address for the subject "pierres1630@gmail.com". The PayPal forms indicated the Pierre Jones information had been confirmed. Meier indicated that this meant that PayPal had a credit or debit card linked to the name, ensuring the payment.
129. RackNine records show that the client #93 set up 3 caller id phone numbers, that is 3 different phone numbers from which the client could choose 1 phone number to have appear on call recipients' call displays as if coming from that number, once a call was transmitted. The record also shows that only the calls using calling number 450-760-7746 were broadcast. Meier said that

this would be on the client's automated instructions. The other 2 numbers, that is, the numbers that were not used by the client, were 519-837-2651 and 800-434-4456.

- i. 519-837-2651: Based on a Google search I conducted December 1, 2011 at <http://www.cbc.ca/news/politics/canadavotes2011/myelection/riginds/134/>, I learned this number was the Frank Valeriote campaign office public number used during the 41st election campaign. Valeriote was the Liberal Party candidate in the election in Guelph.
 - ii. 800-434-4456: This number is the same as the number that was included in the text of the misleading message as an Election Canada number for electors to call for additional information on the moving of their poll. Electors who called this number on May 2 received a response that the number was not in service, as did I when I called it on May 4 and again on December 1, 2011.
130. On November 28, 2011 I called the University of Ottawa Protective Services. I was advised that the University has no record of any current student named Pierre Jones, whether by correspondence or otherwise.
131. On November 25, 2011 I conducted a Canada 411 check for Pierre Jones at 54 Lajoie Nord, Joliette, Quebec. There was no listing. A reverse postal code lookup provided 9 individuals with Rue Saint-Viateur, Joliette addresses, none of which is Jones. Rue Saint-Viateur, Joliette intersects with 54 Lajoie Nord.
132. On March 2, 2012 Constable Jean-Claude Larose of the RCMP checked on address 54 Lajoie Nord, Joliette, at my request. He reported there is no such address, the closest being 56 Lajoie Nord, which is the site of Royal Canadian Legion Post #83.
133. The 3 payments made via PayPal to RackNine, each on May 1, 2011, are as follows.

Gross	Fee	Net	Time of Payment	Unique Transaction ID #
50.00	1.75	48.25	12:22 PDT	67H44899MK983763U
125.00	3.93	121.07	19:16 PDT	69P78805TV853110Y
25.00	1.03	23.97	19:22 PDT	770636991C6888648

The RackNine Record – The Marty Burke Campaign

134. Meier also identified, on November 23, and later, on November 29, 2011, gave me a record of 10 phone 'campaigns' transmitted from RackNine to electors in Guelph as coming from "The Marty Burke Campaign". Each was assigned a 'campaign' name by the client, such as "Gail Shea BBQ". These phone 'campaigns' were calls made between March 31 and May 2, 2011. This included a May 2 phone 'campaign' called "Counter Fake EC", which Meier said he recalled as a Burke campaign phone message advising Guelph electors to disregard misleading calls. Meier advised me that his contact for the Marty Burke Campaign was Andrew Prescott (see paragraph 107 above), who was also the payor. Meier understood the client to be Andrew Prescott by the use of client #45 log in information, Prescott having been assigned that client number when he first became a client.
135. I was aware from several of the electors identified above that both the Conservative and Liberal parties transmitted May 2, 2011 phone messages to Guelph electors warning them of misleading poll moving calls. I am also aware of these messages from separate conversations I had on December 6, 2011 with Arthur Hamilton, counsel for the Conservative Party, and with Hari Subramaniam, a volunteer who had worked on the Valeriote (Liberal) campaign.
136. The May 2 "Counter Fake EC" phone 'campaign' could explain the May 2 calls to RackNine from Burke campaign phones (above at paragraphs 107-109), but does not explain why all of the phone 'campaigns' are absent from the Candidate's Electoral Campaign Return as an electoral expense.

Conclusion Based on paragraphs 115-136

137. I concluded from the above that RackNine acted as the VBV that sent the recorded calls to Guelph electors on May 2, 2011 which falsely claimed to be from Elections Canada and which told electors their polling stations had changed to the Old Quebec Street Mall. Further, that an individual identifying himself as Pierre Jones paid for this service via 3 payments through PayPal as described in PayPal records in the possession of RackNine Inc. I concluded that these payment records should be available from PayPal, including the payor's identification and method of payment and related information concerning his contact with PayPal. Further, that had the message in support of Frank Valeriotte been sent, it would have been received by Guelph electors between 02:00 and 04:45 in the morning of election day, May 2, 2011, and most likely would have been intended to irritate electors and prejudice them against the Valeriotte campaign.
138. I also concluded that the Marty Burke campaign also used RackNine as a VBV for their election campaign, notwithstanding the absence of any payment to RackNine appearing in the Candidate's Electoral Campaign Return.

PayPal Customer Records

139. As a result of the information above I sought and obtained a Production Order dated December 12, 2011, for PayPal records relating to the Pierre Jones transactions. I served the Order on PayPal on December 12, 2011. Michael Lefevor of PayPal made a return on the Order on February 15, 2012, by secure (password protected) email. Additional material was provided by secure email on February 21 and on March 7, 2012.
140. The PayPal material records the customer name as Pierre Jones, living at the 54 Lajoie Nord, Joliette, Quebec address. The telephone number provided to PayPal was 450-760-7746, the same cell phone number which appeared on the electors' call displays in Guelph.
141. Within the PayPal material are 4 electronic documents which PayPal calls "Account Information". These detail 4 transactions in which the individual calling himself Pierre Jones used or attempted to use a credit card to pay for services on May 1 and 2, 2011. The first use was unsuccessful; the remaining 3 uses transferred money in the amounts set out at paragraph 133 above. The first was an attempt to transfer funds using a MasterCard and the other 3 uses involved transfers of funds by separate Visa cards.
142. Within the PayPal return are 4 electronic documents which PayPal call Activity Logs. These and other PayPal documents detail 4 separate log in activities, that is, log ins into the PayPal payment website, by the individual who identified himself to PayPal as "Pierre Jones"⁴. During 3 of these log-ins 'Jones' paid to PayPal the money set out at paragraph 133 above. Each activity log shows that the Pierre Jones contact came to PayPal from IP, or Internet Protocol, address 64.64.11.139. They further show that initially, on a contact dated May 1, 2011, the individual had to set himself up as a PayPal client and had his MasterCard use rejected. The 3 subsequent Logs indicate that the 3 separate Visa cards used worked to transfer money to PayPal on May 1, 2011. Each event of the online activity, was logged to IP address 64.64.11.139 by date, hour, minute and second as expressed in Pacific Standard Time.⁵
143. The PayPal Activity Logs also identify, for each contact through IP number 64.64.11.139, that the "actor" (PayPal's term) was pierres1630@gmail.com. This was the same email address used by "Pierre Jones" as recorded in the RackNine records.
144. The PayPal material disclosed contact from 64.64.11.139 was in relation to each card which was being proffered at that moment. That is, the PayPal record groups contact by card number. PayPal identifies all contact as occurring on May 1, 2011, hence 4 activity logs, each linked to a card number. The 4 card numbers as identified by PayPal are as follows:

Card Name	Card Number
MasterCard	5113403212497464
Visa	4729260109616641

⁴ Log-in or Log-on refers to the process of identifying oneself to a computer, usually by entering one's username and password.

⁵ See paragraph #4 f. for an explanation of IP address.

Visa	4729260100735549
Visa	4729260107497572

Peoples Trust Records

145. On February 22, 2012 I queried the card numbers on Google. I received a response that Visa cards with the 4729 prefix were issued by the financial institution Peoples Trust. A separate query identified a financial institution called Peoples Trust in Vancouver, British Columbia.
146. On February 22, 2012 I contacted Casey Callaghan-Cullen of the security office of Peoples’ Trust of Vancouver, British Columbia. Peoples’ Trust is a Canadian bank located in Vancouver. Callaghan-Cullen confirmed to me that Peoples’ Trust was the issuer of all 4 cards. Peoples’ Trust, through vendors such as 7-Eleven, Quickie, and Shoppers Drug Marts, sells these cards as non-reloadable, prepaid cards, under both MasterCard and Visa names, under the logo “Vanilla”. Despite the MasterCard and Visa names, Callaghan-Cullen said these cards are not credit cards and do not extend credit, and thus the seller does not need to know or record purchaser information. Callaghan-Cullen likened them to gift cards. These cards have a face value just as with a gift card which is loaded on the card at the time of purchase. The cards contain a 16 number card identifier, but the cards are not linked to individual purchasers unless a purchaser takes the additional step of going online and registering the card. Callaghan-Cullen advised me that the 4 card numbers I gave him had never been registered, and that the 3 Visa cards had each been used only at PayPal, as had the attempted MasterCard use.
147. Callaghan-Cullen advised me on February 24, 2012 that each of the cards had a “retail load”, that is, had the initial value added to them, at Shoppers Drug Mart stores. Callaghan-Cullen advised me on February 29, 2012 that the cards were purchased at the following Shoppers Drug Mart stores.

Card Name / Purchase Date	Card Number	Store Address	Denomination
Mastercard – 30 Apr	5113403212497464	380 Eramosa Rd., Guelph	\$200
Visa - 1 May	4729260109616641	615 Scottsdale Dr., Guelph	\$75
Visa - 1 May	4729260100735549	380 Eramosa Rd., Guelph	\$150
Visa - 1 May	4729260107497572	380 Eramosa Rd., Guelph	\$35

Conclusion Based on paragraphs 139-147

148. I conclude from paragraphs 139-147 that the individual calling himself “Pierre Jones” used untraceable preloaded ‘Vanilla’ cards to pay for the calls to the Guelph electors, and used IP address 64.64.11.139 to contact PayPal, thereby indicating an intention to keep his or her identity anonymous. Communications were made by email from “Pierre Jones” to PayPal using the email address pierre1630@gmail.com. This is was the same email address and name the individual used to communicate with RackNine to set up and initiate the misleading calls to Guelph electors.

THE IP ADDRESSES – Part 1

What Has Been Learned

#1. IP address 64.64.11.139 - The Proxy Server

149. Paragraph 4 above defines an IP address. Paragraph 142 above indicates that IP address 64.64.11.139 was left on the PayPal “Activity Logs”. On February 15, 2012 I queried IP address 64.64.11.139 on Google at “IP lookup”. This gave a result of “star.freeproxyserver.ca”, a web site, located in Canada. A link to “IP owner info” on “Whois”⁶ identified the Internet Service Provider, or ISP for 64.64.11.139 as ServInt, and provided the name Marc Norris and the location, Box 28, Conquest, Saskatchewan.

⁶ “Whois” is an internet search which allows one to search for the owner of an IP address or domain name.

150. Staff Sergeant Bob Bisson of the RCMP Integrated Technical Crime Unit (ITCU) advised me on February 15, 2012 that proxy servers are websites that act as an intermediary, or proxy, between the originator of a message and its intended destination. S/Sgt. Bisson said that proxy servers serve to make internet queries anonymous, as what happens is that when an individual logs into a proxy server, this allows him to redirect a query to the intended destination which “sees” the query as coming from the proxy server IP address rather than the originator’s IP address.
151. ServInt is located at 6861 Elm Street, Mclean, Virginia. I emailed ServInt on February 15, 2012 to determine if they are the Internet Service Provider for 64.64.11.139. ServInt responded by an unsigned email on February 15 to confirm they hold that IP address, but that it is the hands of a customer whom they could not name.
152. On February 28, 2012 I confirmed Marc Norris’ street address through Nathalie Girard of Elections Canada, using National List of Electors information retained at Elections Canada.
153. On February 20, 2012 I reviewed my investigative results regarding IP address 64.64.11.139 with Sergeant Stéphane Turgeon of the RCMP ITCU at Ottawa. Sgt. Turgeon indicated that, in the normal course of business the person accessing “freeproxyserver.ca” should leave a link in the form of his own IP address that would also link the IP address of the person or business being accessed (e.g. PayPal). A proxy server would create and retain this record, but Sgt. Turgeon could not say how long such a record would be retained, and any record retained could be deleted.
154. On February 21, 2011 I queried and accessed “freeproxyserver.ca” from my home computer. I did this from my home computer as my Elections Canada computer firewall blocked access under “Category: Proxy Avoidance”.
155. The site then provides a query bar with the example “http://www.myspace.com”. I erased the “myspace” portion and entered “www.PayPal.com”. I was then transferred to a PayPal site with a member log in bar. I clicked on “Log in” and was transferred to the PayPal log in template, asking for my email address and password. In other words, I was connected to PayPal through the proxy server and able to transact business.
156. I accessed the Terms of Service and Privacy Policy pages for “freeproxyserver.ca”. Under the link to Terms of Service, one condition was that “All IP addresses of computers using this service are logged and Free Proxy Server has the right to ban any IP from the server at any time without given (*sic*) notice”. This is consistent with Sgt. Turgeon’s explanation above.
157. Under the link to Privacy Policy at “freeproxyserver.ca” there was a paragraph which stated:

“Routine Information Collection” which states that all web servers track basic information about visitors, including IP addresses, browser details, timestamps and referring pages. None of this information can personally identify specific visitors to this site. The information is tracked for routine administration and maintenance purposes”
158. On April 10, 2012 I obtained a Production Order in Saskatchewan for Marc Norris operating as freeproxyserver.ca. On service of the Order on April 16, 2012, Marc Norris made inquiries with his hosting site, ServInt in Virginia. ServInt reported to Norris, who has provided a copy of this to me, that any records were retained for a 24 hour period only, then deleted. Consequently IP address 64.64.11.139 appears to have been a dead end, except insofar as its use demonstrated an intent on the part of the individual responsible for the misleading messages to electors to remain anonymous to PayPal and (as seen below) to RackNine.

#2. IP address 99.225.28.34

RackNine IP Address Information

159. When I served the Production Order on RackNine on November 23, 2011, Matt Meier advised me that due to upgrades to his computer system he did not think he could locate any IP address related to the Pierre Jones contacts. I met briefly with Meier on March 4, 2012 and he still had not

located any IP address information. IP address information had been one element of the data to be produced under that Production Order of November 23, 2011.

160. On March 6, 2012 Meier sent me an email telling me he had just found the IP address information relating to 'Pierre Jones' by reviewing session logs of contact with RackNine. On March 6 and 7 Meier also sent me by attachment 3 session log spreadsheets, prepared from RackNine records, which detail contact with RackNine by client #45 and #93. I also spoke with Meier on March 6 and 8 and May 9, 2012. Meier understood during the election that Andrew Prescott was client #45, and was arranging for voice message broadcasts for the Marty Burke campaign in the election. Meier did not deal with anyone else from the Marty Burke campaign in Guelph except Prescott. Meier understood Prescott to be involved by the use of client #45 for log in purposes and because he spoke with Prescott during the campaign, including on May 2, 2011. Meier knew client #93 as Pierre Jones, and spoke with him on April 30, 2011 when "Jones" called him to set up the account (paragraph 121 above). RackNine records demonstrate that client #93 was responsible for the misleading calls in question. Meier also gave me a 23 page report, explaining his findings based on the session log spreadsheets.

161. The session logs show, as noted at paragraph 4 j) above, Andrew Prescott, as client #45, used other IP addresses before and after the misleading call period of April 30 to May 2, 2011. In fact the session logs for client #45 covers the period October 19, 2010 through March 6, 2012 and provides a number of different IP addresses from which client #45 logged into RackNine.⁷

162. Meier explained that when a customer accessed the RackNine website, that access was captured in a session log and was stored in a MySQL table, called a "session", on his server. SQL refers to a form of computer programming language. Meier has matched session records to the unique client access id number to the extent his records would allow. He tells me that there are still instances in which he cannot match a client access with a particular session history.

163. Meier explained that the process is as follows⁸:

- a) an individual becomes a client of RackNine once they have spoken with Meier, been accepted by him as a client, and have been issued a client user name and password. With the user name and password a client can log into RackNine by phone or on its website and become a user of RackNine's automated services;
- b) RackNine assigns unique client id numbers to clients. These client id numbers serve as internal pointers within the database to link and record database actions and records to particular clients. Client id numbers are not known to the actual clients, who use their user name and password to access RackNine services;
- c) RackNine implements its calling through the website <http://dialer.2call.ca>. RackNine's database records access and use of its website in a number of ways, and the records are recorded in various tables found within the RackNine database;
- d) a client accessing the website by his user name and password is recorded in an access log, which recognizes and records the particular client number, based on the client's sign in using their unique user name and password. The access log records the client id number, the time and date of access, and whether or not the access was successful. In 2011 the access log did not record the IP address of the computer from which the client was accessing the database;
- e) the act of accessing the database also initiates the collection of data within a second record, called a session log which is initiated automatically once a client has accessed (successfully logged in) the RackNine website. The website is configured so that session information is created and stored on the RackNine server using a "session identifier" generated as a result of the request for contact by the client user at the beginning of each visit to the RackNine website. The unique "session identifier" allows RackNine to track the user as they advance through various pages on the website, so that the user does not have to log in each time they change a webpage. Similar systems are customarily used by many websites for this purpose;

⁷ In the ITO for a Production Order to Rogers, to access subscriber information for this IP address, I erroneously said the client #45 session log record was from October 19, 2010 to August 16, 2011.

⁸ This explanation has been supplemented for this ITO as a result of my interview of Meier of May 9, 2012.

- f) the session log that is created records a number of facts: a unique identifier, the user id number of the last client who logged in during the session, the date and time the session was first created, the date and time the session was last active or the last page was requested by the user, the IP address of the user and the last page accessed by a user in a session. When I refer to RackNine records as identifying the use of a particular IP address, in the paragraphs below, I am referring to data that has been collected and recorded in the unique session logs;
- g) a comparison of the access log time and date and the corresponding time and date of a session will identify the first client who first logged into RackNine for a session, if more than one client was involved in the session as the access log records the client number that relates to the user signing in with a user name and password, while the session log which that sign in event initiates records the user id number of the last client using that single session;
- h) the session log is distinct from the access log, but the access login initiates the session, which is recorded in a session log. Within a single session, however, individual clients can log out as a particular client number and other clients can log in with their unique client user name and password to perform various functions or initiate RackNine actions as a second or subsequent client user. In such a case, as there is only one uninterrupted session, the IP address remains the same;
- i) to repeat for emphasis - there are 2 distinct records created: there is the single access log record, which is associated to the client who logged into RackNine in order to first initiate the session. There will be a separate session log record that records, amongst other data, the client number of the client who last logged into the session as well as the single IP address from which the communication with RackNine came;
- j) The unique session log will continue to collect and record data, even if the web page was inactive for several hours or as the user advanced from page to page within the website. A session will only close if it "times-out" after a pre-determined fixed period, or if the browser window is closed by the end user. The next time the client logged into the RackNine website a new access log record would exist and a new unique session log would begin and a new record of the IP address would be made;
- k) client activity within a session could happen immediately, some minutes into the session, or never, and the session would have still commenced and a session log record would begin, including the record of the client's originating IP address, when the client first accessed the RackNine website.
164. Meier told me that as far as he knew during the election period, RackNine worked in Guelph for Andrew Prescott, who was acting on behalf of the election campaign of candidate Marty Burke. In addition, Meier stated that he gave no training to the person identifying themselves as Pierre Jones. According to Meier " (H)e [Pierre Jones] used the RackNine database completely on his own" once his client id number had been established and his user name and password provided. To me, this indicates familiarity with the use of the RackNine database by client #93.
165. Meier told me that the session logs he has recovered identified 2 IP addresses as having been used by both clients #45 and #93, between April 30 and May 2, 2011. As noted above at paragraph 161, a number of other IP addresses were used by client #45, Andrew Prescott, to access RackNine, between his beginning as a client October 19, 2010 and continuing to March 6, 2012. Client #93, however, used only 2 IP addresses used between April 30 and May 2, 2011.
166. Meier provided the following information relating to the use of the 2 IP addresses and clients #45 and #93 between April 30 and May 2, 2011, when the misleading call message and the calling list were uploaded to RackNine and the misleading calls to Guelph electors were made.
- a) IP address 64.64.11.139, the proxy server, appears in the session logs 4 times, and was used by client #93, namely Pierre Jones;
- b) IP address, 99.225.29.34, appears numerous times in the session logs, and was related to use by client #45, Andrew Prescott, who used other IP addresses as well, outside the April 30 and May 2, 2011 period, which were also recorded in the session logs;

- c) that by comparing access logs and session logs together, Meier identified that between April 30 and May 2, 2011 both client #45 and client #93 used both IP address 64.64.11.139 and IP address 99.225.28.34 to communicate with RackNine, as explained in d) through f) below;
- d) client #93 logged in to a session on May 2, 2011, which was “stored” in RackNine records as “Userid 45” or Prescott. This session were initiated from IP address 99.225.28.34. There were 3 sessions occurring on May 1 and May 2, 2011 in which client #45 logged in, which were “stored” in RackNine records as “Userid 93” or Pierre Jones. Two (2) of these latter sessions were from IP address 66.64.11.139, one (1) session was from IP address 99.225.28.34;
- e) the fact that 2 clients were recognized within the single, unique, session log record meant that after the initial access, or log onto the RackNine website, the second client user changed the client id record in order to perform some function in the same session on the RackNine database that was specific to that second client user.
167. This correlating of access log and session log information (paragraph 166 c) above) thus indicates both client #45 and #93 used the proxy server to access RackNine and both client numbers used IP address 99.225.28.34 to access RackNine..
168. Amongst other data, the session logs and the client access log provided to me by Meier on March 6 and 7, 2012 and November 23, 2011 respectively, also show the following:

- a) session log information shows that Client #93 last accessed a RackNine webpage at 21:19 on May 1, 2011 via IP address 64.64.11.139. Both access log and session log records show that client #93 then accessed RackNine in a new session, with a new session log entry beginning at 21:20 May 1 which showed that client #93 was communicating from IP address 99.225.28.34. That is, the 2 session events were 1 minute apart, but coming from 2 different IP addresses. Meier told me on May 9, 2012 that he thought that most likely client 93 closed his first session at 21:19 but immediately returned to the RackNine website, forgetting about going through the proxy server, or thinking that he was still logged in through the proxy; and
- b) on May 2, 2011, in 2 separate sessions, clients #93 and #45 were both communicating with RackNine from IP 99.225.28.34 within 4 minutes of each other. Session log information shows that Client #93 last accessed a RackNine webpage at 02:12 on May 2, 2011 (the subject of one session log) and that a new session log was initiated for client #45 at 02:15 on May 2, 2011. As both communicated with RackNine from IP 99.225.28.34, within less than 4 minutes of each other, it seems that clients #93 and #45 were likely together at this time.

Tracking IP address 99.225.28.34

169. On March 7, 2012 I searched IP address 99.225.28.34 on “IP lookup” and “ip-address.com” and received the result that IP address 99.225.28.34 has Rogers Cable as its Internet Service Provider (ISP) and that it is located in Guelph. On March 14, 2012 Glenora Drysdale of the Rogers Law Enforcement Support Group confirmed to me by email that they have records relating to subscriber and billing information relating to IP address 99.225.28.34.

Conclusion Based on paragraphs 149-169

170. I concluded the following from the paragraphs above:
- a) That the individual acting as Pierre Jones took steps to hide his identity and location by using IP address 64.64.11.139, “freeproxyserver.ca”, in order to contact RackNine to upload his voice broadcast instructions and to contact PayPal to pay for the RackNine services through PayPal;
- b) that the individual known to RackNine as client #93, or Pierre Jones, nonetheless also used IP address 99.225.28.34 to contact RackNine directly to perform several additional services in relation to the misleading message distribution;
- c) that IP address 99.225.28.34 was used by Andrew Prescott as client #45 in communications with RackNine on behalf of the Marty Burke campaign, but was also involved in a session which originated from IP address 64.64.11.139, “freeproxyserver.ca”;

- d) that Rogers is the ISP for IP address 99.225.28.34 and has records that relate to the internet service contract, billing and subscriber information for the relevant period; and
- e) that the Rogers documents or data for IP address 99.225.28.34 and other IP addresses would assist in identifying the person or persons responsible for the misleading messages to Guelph electors.

Tracking IP address 99.225.28.34 Cont'd

- 171. On March 20, 2012 I obtained a Production Order for Rogers' records relating to IP address 99.225.28.34. Rogers provided initial return material on March 21 and 30, 2012. Rogers uses "dynamic" IP addresses, which means that the addresses are reassigned frequently between users without the user even realizing it. Between March 26 and May 5, 2011 and as of March 20, 2012, Rogers assigned IP address 99.225.28.34 to 3 different subscribers. I have received the names of these subscribers.
- 172. Rogers reported that the subscriber of IP address 99.225.28.34 between March 30 and May 11, 2011 is located in a municipal area south of Guelph, Ontario. This subscriber is cooperating with my investigation. In view of the extensive media coverage this investigation has gone through since ITOs were accessed by reporters, beginning February 23, 2012, and in consideration of the privacy interests of the subscriber, this ITO provides the description given in this and the paragraphs below, rather than the name of the subscriber, until further investigation can be completed.
- 173. On March 29, 2012, Nadine Muboyayi of Elections Canada, advised me of the names of the electors residing at the subscriber residence at the time of the election, as recorded in the National List of Electors retained at Elections Canada. The names of the residents are not directly relevant to the Orders requested in this ITO.
- 174. On April 25 and 26, 2012 investigator Ron Lamothe and I met with 4 of the residents. They cannot account for the use of IP address 99.225.28.34. None knew or recognized pictures of primary Burke campaign personnel Ken Morgan, Andrew Prescott or Michael Sona. The 5th individual gave the same negative account in a phone conversation with his mother, conducted in my presence. None knew of individuals visiting their residence who might have used the IP address. The house has wireless internet, which the residents describe as "weak". I have no reason at this time to believe these individuals are not truthful. This IP address is still under investigation (see immediately below as well).
- 174.a On May 11, 2012, that is, after I received the Rogers information, I asked Christopher Rougier, the Director of Voter Contact for the Conservative Party, through Arthur Hamilton, counsel for the Party, for the IP addresses through which 5 named Marty Burke campaign volunteers accessed the CIMS database on particular dates between April 23 and May 2, 2011. CIMS refers to the Constituency Information Management System, which is a Conservative party database tool for identifying supporters, non-supporters and other data. (See further below at paragraphs 188 *et seq*). Access to CIMS is limited to those who have been approved access by the Party, and who have been issued unique passwords. Rougier responded that of 41 access events, 32 access events, which included access by each of the 5 volunteers, were via IP address 99.225.28.34.

Conclusion Based on paragraphs 171-174.a

- 174.b. I have concluded that while the subscriber for IP address 99.225.28.34, as identified by Rogers, has not yet been connected to the Burke campaign, the subscriber's IP address was used by both clients #45 – Andrew Prescott and #93 – "Pierre Jones", as well as by 5 Burke campaign personnel (including Prescott) to access the CIMS website.

Additional Relevant Investigation

- 175. The following information is relevant to demonstrate avenues of investigation that have been or are being pursued as they relate to conduct during the election period and to IP address use.

Andrew Prescott

176. On February 23, 2012 media reports of this investigation appeared. These reports have grown in intensity. On February 24, 2012 I spoke by telephone conference call with Andrew Prescott and Arthur Hamilton, counsel for the Conservative Party. Prescott explained his relationship with RackNine, which he said he used for some phone campaigns within the Burke campaign.
177. Prescott told me he paid for RackNine services on behalf of the Burke campaign using his private credit card, and that he was reimbursed for these and other out of pocket expenses by the Official Agent of the campaign, in the amount of \$1,100. Prescott told me that he provided the campaign with a spreadsheet of the various expenses for which he was seeking reimbursement. I subsequently reviewed again the Burke campaign return noted above at paragraph 111. I found a single entry for an expense of \$1,100 for Andrew Prescott under the column for “salaries and wages”.
178. Prescott, through an email to me from Arthur Hamilton of February 29, 2012, provided a copy of a brief list he said he had given to the Burke campaign. This document is undated and unsourced, except by Mr. Hamilton and Mr. Prescott, and does not appear in the campaign return expense material submitted to Elections Canada by the official agent. The list identifies 19 expenses incurred by Mr. Prescott over the election, totaling \$1,015.49. Of these, 6 relate to RackNine “voice drops” totaling \$400.00. On May 9, 2012 Matt Meier of RackNine provided me with the RackNine finance log relating to Andrew Prescott, which is consistent with the 6 payments for 10 phone ‘campaigns’.
179. On February 24, 2012 Prescott advised me that he had experience since 2010 using RackNine, was enthusiastic about the service they could provide and talked about it with his fellow campaign workers, including Ken Morgan the Campaign Manager and Michael Sona, the Communications Director. He also had an email in which he responded to a request for contact information for RackNine, from Morgan and Sona. The email response from Prescott to Morgan and Sona gave RackNine phone numbers, and was addressed to Morgan and Sona at 5:30 p.m. April 30, 2011. Arthur Hamilton subsequently provided me with a copy of the email on February 24, being forwarded to him by Andrew Prescott.
180. An interview of Andrew Prescott was scheduled for March 8, 2012, but on March 7, 2012 I was advised by counsel Matthew Stanley of Guelph that Mr. Prescott declined to be interviewed. On April 20, 2012 I asked Mr. Stanley again for an interview of Mr. Prescott. Mr. Stanley has not responded.
181. In the RackNine email exchange with the individual known as Pierre Jones, copies of which Matthew Meier provided to me on November 23, 2011, the first email follows phone contact between Meier and Jones, and occurs at 7:07 pm MDT, or 9:07 pm EDT on April 30, 2011. This is approximately 3 1/2 hours after the Prescott email to Morgan and Sona.
182. As well, as described above at paragraph 174.a., I received IP address information relating to campaign workers logging on to CIMS. On April 23, 30 and May 1, 2011 Andrew Prescott logged on to CIMS 10 times. Three (3) of these occurred on April 23, with Prescott using IP address 208.168.233.160. As shown at paragraphs 196-98 below, this ISP for this IP address is “Cable & Wireless – Cayman Islands”, which is consistent with information received from Marty Burke campaign witnesses that Prescott travelled there during the election. The other 7 times that Prescott logged on to CIMS was from IP address 99.225.28.34, which IP address also appears in the RackNine record.

Abdul-Qayum Ali

183. Abdul-Qayum Ali was the official agent of the Burke campaign. Ron Lamothe and I interviewed Mr. Ali on April 3, 2012. Mr. Ali advised he never saw the Prescott expense spreadsheet until he heard of it in media reports. Following the election he paid Prescott an honorarium of \$1,100.00 at the instigation of Ken Morgan, Campaign Manager. Ali told us that had he known that Prescott had incurred expenses, Ali would have itemized them in the Campaign Return and paid Prescott the \$1,015.49 indicated in the spreadsheet. Ali reported that he has spoken with Ken Morgan since the current media coverage began and Morgan told Ali that Morgan had the spreadsheet, but that Prescott was reimbursed his expenses by way of the honorarium.

184. The practical effect of Morgan's omission to pass on the spreadsheet to the official agent was to report to Elections Canada the funds as an honorarium instead of as expenses, the Burke campaign's use of RackNine for calling.

Matthew McBain / John White

185. On February 28, 2012 and again on April 19, 2012 Ron Lamothe, and I met with Matthew McBain and Arthur Hamilton, counsel for the Conservative Party. McBain was a Conservative Party worker during the election, working in the central "war room". McBain said that he did not know Michael Sona, an individual working on the Burke campaign. At some point he realized that Sona was leaving voice mails for him during the campaign. McBain checked by email with John White, whom he knew and who was working on the Guelph campaign, to determine if he should return Sona's calls. White vouched for Sona by return email and said that Sona needed some advice. Through Arthur Hamilton, McBain has provided me with the email exchange between himself and White of April 26 and 27, 2011.
186. McBain subsequently contacted Sona. Sona spoke to McBain about wanting to set up an auto dial call so that the payment for the calls would not track back to the campaign. McBain warned Sona off any misconduct as the Party would not stand for it. McBain presumed that the desire for calls not to track back to the campaign meant the calls would be embarrassing or improper⁹. That was the end of McBain's involvement during the election period. McBain never checked back with John White.
187. Ron Lamothe and I interviewed John White of the Burke campaign on April 3, 2012. White said that Michael Sona approached him during the election and "was looking about doing some stuff that might not be okay and I told him, go talk to Matt." According to White, Sona wanted to set up a call out to electors that could not be traced back to the campaign. White said that he referred Sona to McBain as Sona would not take a "no" from White, and White assumed McBain would shoot the idea down. White said that was the end of his involvement, that he did not check with McBain to ensure the proper message got back to Sona, did not refer the matter to Ken Morgan the campaign manager and did not refer to the matter again even when it became known on Election Day that misleading calls to electors were made.

Christopher Crawford

188. Christopher Crawford was a Burke campaign "CIMS" person. Ron Lamothe and I obtained a statement from Crawford on March 5, 2012.
189. Crawford said he was responsible for organizing the door-to-door campaigning for the Burke campaign. He would download "walk sheets" from CIMS in the morning, grouped by 4 or 5 individual polls, using a campaign computer. This material would provide elector names, addresses, phone numbers and political data (supporter, contributor etc.). Canvassers would record on the "walk sheets" the responses received from electors, such as supporter, non-supporter, lawn sign etc. At night Crawford would scan the responses into CIMS using a bar code reader. The responses would include data relating to whether an elector was a supporter, non-supporter, etc. Thus CIMS would be updated nightly with current data.
190. Crawford said that one evening several weeks into the campaign, while he was inputting CIMS data, he overheard a conversation between Michael Sona and Ken Morgan in which Sona was describing 'how the Americans do politics', using the examples of calling non-supporters late at night, pretending to be Liberals, or calling electors to tell them their poll location had changed. Crawford said he did not think Sona was serious, but he claims he did say to Sona, before leaving the office that evening, that his comments were not appropriate.

⁹ In an earlier ITO I wrote that Sona called McBain "about a campaign of disinformation such as making a misleading poll moving call". On checking I realize that in both interviews Mr. McBain recalled the call as described at paragraph 186 above, and that he did not recall Sona as relating the call to "disinformation" or about a misleading "poll moving call", only that he wanted to set up an autodial call that would not track back to the Burke campaign.

191. Crawford said he did not mention this account to anyone at all until I called him in to schedule an interview. He then consulted Fred DeLorey, a Conservative spokesman on February 28, 2012, who put him in touch with Arthur Hamilton.
191. a As well, as described above at paragraph 174.a., I have received IP address information relating to campaign workers logging on to CIMS. On April 30 and May 1, 2011 Crawford logged on to CIMS 13 times. Each time that Crawford logged on to CIMS was from IP address 99.225.28.34. On May 14, 2012, through Arthur Hamilton, Crawford advised that he was physically at the campaign office when he logged onto CIMS.

Christopher Rougier

192. On March 9, 2012 Ron Lamothe and I interviewed Christopher Rougier. This interview was attended by Arthur Hamilton as well. Rougier is the Director of Voter Contact for the Conservative Party. He has reviewed CIMS records which I had asked Mr. Hamilton on March 5, 2012 to obtain for me. Rougier confirmed that Andrew Prescott, amongst several others, had CIMS access permission to call up Guelph elector data, and that CIMS records indicate he did so on April 30 for what appear to be 3 “Deamon Dialer” reports. A “Deamon Dialer” report, according to Rougier, is simply a list of phone numbers which can be configured as supporters, non-supporters etc. The CIMS record indicated that Prescott downloaded the reports to the local computer he was using. Rougier said that some, but not all downloads of CIMS data, can be reproduced. For example, 2 of the “Deamon Dialer” lists of April 30 could be reproduced by Rougier, but not the third. I have since learned, on May 11, 2012, that the 3rd “Deamon Dialer” download had been cancelled by Prescott and so was never “exported”. Mr. Rougier has provided me with the “targeting information” which describes the criteria to which Prescott had asked CIMS to respond.
193. Rougier said that the Conservative Party had been provided a copy of the RackNine calling list (the ‘Pierre Jones’ list) by Matthew Meier and Rougier has compared it to CIMS data on Guelph electors. Rougier said the RackNine list appears to be a list of identified non Conservative supporters, with data on it that was updated in CIMS on April 27, 2011. That is, the RackNine list contained non supporter data that did not exist in CIMS before that date.
- 193.a. As noted above at paragraph 174.a., Rougier on May 11, 2012 provided me with a spreadsheet indicating the IP addresses from which 5 named Burke campaign volunteers accessed the CIMS database on 41 occasions of which 32 were from IP address 99.225.28.34. The 5 volunteers are Andrew Prescott, John White, Kenneth Morgan, Trent Blanchette and Christopher Crawford, and the access events were on April 23, 27, 29, 30 and May 1 and 2, 2011.
- 193.b. As noted above at paragraph 180 Andrew Prescott has declined to be interviewed by investigators. On April 15, 2012 Kenneth Morgan, the Burke campaign manager, by email, also declined to be interviewed as did Trent Blanchette, by phone, on March 28, 2012. As a result, these 3 campaign workers cannot be asked where they were when they accessed CIMS. In his interview of April 3, 2012 John White said that he accessed CIMS from both the campaign office and from his workplace. This is consistent with the Rougier material, which identified that between April 27 and May 1, 2011 White accessed CIMS 10 times, from 3 different IP addresses. Four (4) of those times the access was from IP address 99.225.28.34. The other 6 times access was by 2 other, different IP addresses located in Guelph.

Conclusions Based on paragraphs 175-193.b.

194. I conclude the following from the above noted paragraphs:
- a) that several participants in the Guelph Conservative campaign discussed making misleading or improper calls to electors during the campaign, and setting up an autodial arrangement for this purpose that could not be tracked back to the Burke campaign;
 - b) that the RackNine list of calling numbers is consistent with a list of non-Conservative supporters in the Guelph area, obtained from the Conservative Party CIMS database;

- c) that volunteers on the Burke campaign, including Andrew Prescott, who accessed the CIMS database did so on 32 of 41 selected occasions through IP address 99.225.28.34, notwithstanding that the subscriber to this IP address has not yet been linked to the Burke campaign;
- d) that at least 1 volunteer, Chris Crawford, logged onto CIMS using IP address 99.225.28.34 while physically present at the campaign office and using a campaign computer.
- e) that this IP address link strengthens the inference from the RackNine access and session logs that this IP address was used by the Burke campaign office; and
- f) that this makes it necessary to obtain from Rogers the IP address(es) which were assigned to their customer, "The Marty Burke Campaign" of 965 York Road, Guelph, Ontario (paragraph 107 above).

THE IP ADDRESSES – Part 2

Three (3) Additional IP Addresses Used by Client #45

IP Address 99.236.30.29

IP Address 66.46.250.130

IP Address 174.113.176.66

195. As noted above at paragraph 11, I am seeking 3 Production Orders by means of this ITO.

196. The Production Order on freeproxyservers.ca did not provide evidence to further this investigation. The result of the Order on Rogers for IP address 99.225.28.34 has resulted in material requiring further investigation, but it can be directly linked to Burke campaign use. As noted at paragraphs 166/168 above, some client #45 and client #93 log ins to RackNine have been intermixed. In order to determine whether client #45 is actually Andrew Prescott, or some other person, I have examined RackNine session logs for other IP addresses used by client #45. During the 2011 election period client #45 logged into RackNine using 9 different IP addresses. I have matched these IP addresses to their respective service providers. These IP addresses and ISPs are listed below with the ISPs determined by me by using a Google search at <http://whatismyipaddress.com/ip-lookup>. For reasons explained below I believe client #45 is consistent with Andrew Prescott.

Date	IP Address	Service Provider
March 31	99.236.30.29	Rogers - Cambridge
April 1	66.46.250.130 (3 times) 99.225.28.34	MTS Allstream – Toronto Rogers (Production Order #6)
April 2	99.225.28.34	Rogers (Production Order #6)
April 7	99.236.30.29	Rogers - Cambridge
April 8	66.46.250.130	MTS Allstream – Toronto
April 17	99.236.30.29	Rogers - Cambridge
April 18	99.236.30.29 66.46.250.130	Rogers – Cambridge MTS Allstream – Toronto
April 19	209.226.201.228	Bell – Pearson Airport
April 20	206.48.228.226	Equant - Herndon, Virginia
April 21	206.48.230.149	Equant - Herndon, Virginia
April 22	208.82.216.3 (4 times)	TeleCayman – Cayman Is.
April 23	208.168.233.160	Cable & Wireless – Cayman Is.
April 27	206.48.231.10	Equant - Herndon, Virginia
April 30	99.225.28.34 (4 times)	Rogers (Production Order #6)
May 1	99.225.28.34	Rogers (Production Order #6)
May 2	99.225.28.34 (4 times)	Rogers (Production Order #6)

197. In addition there was 1 other IP address used by client #45 close in date to, but after the end of the election period.

Date	IP Address	Service Provider
June 16	174.113.176.66	Rogers - Cambridge

198. I believe client #45 to be consistent with Andrew Prescott for the following reasons:

a) I have interviewed Marty Burke, the Conservative candidate and his wife Trish Burke (on March 12, 2012, John White, the campaign Get Out The Vote (GOTV) chair (April 3, 2012), Amanda Brodhagen, volunteer coordinator (April 2, 2012) and Paulette Padanyi, the campaign events coordinator (April 26, 2012). Each has told me that Andrew Prescott went south or to the Cayman Islands on a pre-planned holiday during the election campaign. Each has told me that Andrew Prescott was responsible for “voice drops” from the campaign to electors – that is responsible for arranging for automated calls to selected groups of electors. This information is consistent with the IP use described above between April 19 to 27, 2011;

b) In addition, Andrew Prescott works at the St. Joseph Health Centre in Guelph, as demonstrated by a LinkedIn query on Google. LinkedIn is a networking site on the Internet on which professionals post profiles. The profile for Prescott identifies him as a Systems Administrator for the St. Joseph Health Centre. I queried IP address 66.46.250.130 on April 26, 2012. The address comes back as MTS Allstream with a host name of fw3.sjhmain.sjhh.guelph.on.ca. When I queried fw3.sjhmain.sjhh.guelph.on.ca on Google the response provided the organization’s name as St. Joseph S Hospital, Guelph, which I believe is St. Joseph Health Centre, Prescott’s place of employment;

c) Matt Meier has told me that he understood client #45 to be Prescott, that this number was assigned to Prescott before the election, and that Meier spoke by telephone with an individual he believes to be Prescott on May 2, 2011 when Meier noticed that the Burke campaign, under client #45, was sending calls to supporters to counter the effect of the misleading calls; and

d) Client #45’s use of IP address 99.225.28.34 to contact RackNine is consistent with Andrew Prescott’s use of the same IP address to contact the Conservative Party’s CIMS database, by way of a unique user name and password (paragraphs 174. a and 192. a above).

199. On April 27, 2012 MTS Allstream security confirmed to me by email that the subscriber to IP addresses 66.46.250.130 is a business customer of Allstream’s, and that any production order could be addressed to MTS Allstream, 200 Wellington Street W., Toronto, Ontario M5V 3G2.

200. Nadine Muboyanyi of Elections Canada, using National List of Electors information retained at Elections Canada has provided elector data that shows Andrew Prescott resides in Cambridge, Ontario. IP addresses 99.236.30.29 and 174.113.176.66 both link back to Rogers Cambridge.

201. On May 1, 2012 Glenora Drysdale of Rogers security confirmed to me by email that Rogers has records relating to IP address 99.236.30.29 for the period between October 19, 2010 through August 16, 2011 and for IP address 174.113.176.66 for June 16, 2011.

Conclusions based on Paragraphs 149 to 201

202. Based on the facts identified in my grounds for belief I conclude that the person or persons known to RackNine as client #45, who is probably Andrew Prescott, interacted on occasion with the individual responsible for the misleading calls to electors in Guelph who used IP addresses 64.64.11.139 (the proxy server) and 99.225.28.34. As the results of IP address 99.225.28.34 and 64.64.11.139 subscriber data have so far been inconclusive in tracking down client #93, I believe it necessary to conclusively identify client #45 - with whom client #93 appears to have interacted - and who in fact appear to have acted in concert on some occasions (paragraphs 166/68 above). Andrew Prescott has refused to speak with investigators. I conclude that subscriber information for additional IP addresses 99.236.30.29; 66.46.250.130 and 174.113.176.66 which have been used to communicate with RackNine between March 26 and June 16, 2011, is likely to lead to Andrew Prescott as client #45, and possibly his residence and workplace, but I require information from their respective ISPs (Rogers and MTS Allstream) to verify this conclusion.

203. I further conclude that I have grounds to believe from both Rogers and MTS Allstream security officials that they have this subscriber information.

THE EMAIL ADDRESS

Google Canada / Google Inc.

204. As noted above at paragraphs 120, 128 and 143 the individual responsible for arranging for the broadcast of the misleading message via RackNine and paying for it via PayPal, used the email address pierres1630@gmail.com. On April 17, 2012 I sent a test message to pierres1630@gmail.com. The message was never returned to me as undeliverable, indicating that, as far as gmail is concerned, the address is still valid. Even presuming the individual used false personal details, the act of accessing Google to begin the process of creating a gmail account would leave an IP address stamp with Google on the registration. I understand this from Sgt. Turgeon of the RCMP technical crime unit.
205. Gmail is an email service provided to internet users by Google. To obtain a gmail email address one logs into Google and clicks on the "Gmail" tab and completes a personal information template. This includes name, address, phone number and alternate email address elements. I did this on April 19, 2012 to set up a gmail account. A user can create any user name they want so long as it does not duplicate an existing user, my account was set up with the user name simcoe1796@gmail.com. This becomes my gmail address just as pierres1630@gmail.com was the email address for the individual setting up and paying for the misleading messages, which he used with both RackNine and PayPal..
206. On April 17, 2012 I obtained Google corporate information from RCMP Corporal Greg Horton who had obtained it March 28, 2012 for unrelated purposes. "Google Canada Corporation" is incorporated in Nova Scotia, with 2 listed directors, Katherine Stephens and James Marocco. Both directors registered their addresses as 1600 Amphitheatre Parkway, Mountain View, California. Stephens is also President and Secretary of Google Canada. Google Canada Corporation also has an Ontario corporate number 1865287.
207. D&B Canada (formerly Dun & Bradstreet) records, dated March 29, 2012, also obtained from Cpl. Horton, indicate that Google Inc., the parent company, is located at the same 1600 Amphitheatre Parkway address.
208. Google maintains 3 offices in Canada, in Montreal, Kitchener and Toronto, as listed in Dun & Bradstreet records. On February 24, 2012 I called the Google Toronto office and was provided a fax number to contact their legal department. The fax was to the Google Inc. legal department in California. I faxed them on February 24 stating my intention to seek data relating to the pierres1630@gmail.com email address via a Production Order which I intended to serve on their Toronto office, doing business in Ontario, unless they could provide me with IP address information directly.
209. On February 29, 2012 Google Inc. responded by stating Google Inc. is a US company "operating in the US, and governed by USA laws" and asking me to proceed by way of legal process issued from a US jurisdiction. The Google response did not comment on whether records relating to the pierres1630@gmail.com email address existed or not. I do not share the Google view that their records are immune to a Canadian Production Order. They do business in Canada, from offices in Canada and have incorporated a subsidiary here as a distinct corporate entity. To accept Google's position means accepting that a subsidiary company registered and operating in Canada, with Canadian offices, and with respect to conduct carried out in Canada is immune to the Production Order process in the Criminal Code.
210. I understand from Cpl. Horton that Google has taken the same position with the RCMP, and that a Production Order served on Google Inc. operating as Google Canada, served at their Toronto office, is presently subject to a section 487.015 Application for Exemption before the court in Toronto. The application is being opposed by the Crown Law Office, Criminal for the Attorney General of Ontario.

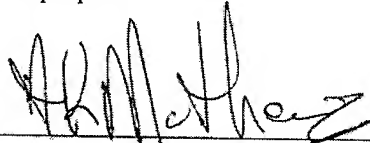
CONCLUSION AND REQUEST

Google Canada / Google Inc.

204. As noted above at paragraphs 120, 128 and 143 the individual responsible for arranging for the broadcast of the misleading message via RackNine and paying for it via PayPal, used the email address pierres1630@gmail.com. On April 17, 2012 I sent a test message to pierres1630@gmail.com. The message was never returned to me as undeliverable, indicating that, as far as gmail is concerned, the address is still valid. Even presuming the individual used false personal details, the act of accessing Google to begin the process of creating a gmail account would leave an IP address stamp with Google on the registration. I understand this from Sgt. Turgeon of the RCMP technical crime unit.
205. Gmail is an email service provided to internet users by Google. To obtain a gmail email address one logs into Google and clicks on the "Gmail" tab and completes a personal information template. This includes name, address, phone number and alternate email address elements. I did this on April 19, 2012 to set up a gmail account. A user can create any user name they want so long as it does not duplicate an existing user, my account was set up with the user name simcoe1796@gmail.com. This becomes my gmail address just as pierres1630@gmail.com was the email address for the individual setting up and paying for the misleading messages, which he used with both RackNine and PayPal.
206. On April 17, 2012 I obtained Google corporate information from RCMP Corporal Greg Horton who had obtained it March 28, 2012 for unrelated purposes. "Google Canada Corporation" is incorporated in Nova Scotia, with 2 listed directors, Katherine Stephens and James Marocco. Both directors registered their addresses as 1600 Amphitheatre Parkway, Mountain View, California. Stephens is also President and Secretary of Google Canada. Google Canada Corporation also has an Ontario corporate number 1865287.
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CONCLUSION AND REQUEST

WHEREFORE the Informant requests that three (3) Production Orders may be granted according to the terms herein proposed.

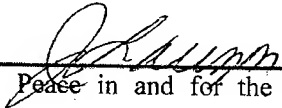


The Informant

PAR CONSÉQUENT, le dénonciateur demande qu'une ordonnance de communications soit accordée sujet aux conditions proposées ci-haut.

Le dénonciateur

Sworn before me this 25 day of May A.D. 2012 at Ottawa, Ontario



Justice of the Peace in and for the Province of Ontario

Assermenté devant moi-même ce ____ jour ____ en l'an de grâce 2012 à Ottawa, Ontario

Juge de paix dans et pour la province de l'Ontario

1030 hrs.